COLORADO CONSUMER CREDIT LAWS

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COLORADO UNIFORM CONSUMER CREDIT CODE

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PART 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

5-1-101. Short title.

Articles 1 to 9 of this title shall be known and may be cited as the "Uniform Consumer Credit Code", referred to in said articles as the "code".

5-1-102. Purposes - rules of construction.

(1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are:

(a) To simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;

(b) To provide rate ceilings to assure an adequate supply of credit to consumers;

(c) To further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) To protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) To permit and encourage the development of fair and economically sound consumer credit practices;

(f) To conform the regulation of consumer credit transactions to the policies of the federal "Truth in Lending Act" and the federal "Consumer Leasing Act"; and

(g) To make uniform the law, including administrative rules, among the various jurisdictions.

(3) A reference to a requirement imposed by this code includes reference to a related rule of the administrator adopted pursuant to this code.

5-1-103. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this code, the "Uniform Commercial Code" and the principles of law and equity, including the law relative to capacity to

contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, supplement the provisions of this code.

5-1-104. Construction against implicit repeal.

This code being a general act intended as a unified coverage of its subject matter, no part of it is deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

5-1-105. Severability clause.

If any provision of this code or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

5-1-106. Waiver - agreement to forego rights - settlement of claims.

(1) Except as otherwise provided in this code, a consumer may not waive or agree to forego rights or benefits under this code.

(2) A claim by a consumer against a creditor for an excess charge, other violation of this code, or civil penalty, or a claim against a consumer for default or breach of a duty imposed by this code, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed, against a consumer, may be settled for less value than the amount claimed.

(4) A settlement in which the consumer waives or agrees to forego rights or benefits under this code is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the consumer, any deception or coercion practiced upon the consumer, the nature and extent of the legal advice received by the consumer, and the value of the consideration are relevant to the issue of unconscionability.

5-1-107. Effect of code on powers of organizations.

(1) This code prescribes maximum charges for all creditors extending consumer credit except lessors and those excluded in sections 5-1-202 and 5-2-213 (2) (b) and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial banks and loan companies, and commercial banks and trust companies, this code displaces existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in subsection (1) of this section, this code does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or

other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2) of this section, this code does not displace:

(a) Limitations on powers of supervised financial organizations, as defined in section 5-1-301 (45), with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits; or

(b) Limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

PART 2

SCOPE AND JURISDICTION

5-1-201. Territorial application - definitions.

(1) Except as otherwise provided in this section, this code applies to consumer credit transactions made in this state and to modifications, including refinancing, consolidations, and deferrals, made in this state, of consumer credit transactions, wherever made. For purposes of this code, a consumer credit transaction is made in this state if:

(a) A written agreement evidencing the obligation or offer of the consumer is received by the creditor in this state; or

(b) A consumer who is a resident of this state enters into the transaction with a creditor who has solicited or advertised in this state by any means, including but not limited to mail, brochure, telephone, print, radio, television, internet, or any other electronic means.

(2) Notwithstanding paragraph (b) of subsection (1) of this section, unless made subject to this code by agreement of the parties, a consumer credit transaction is not made in this state if a resident of this state enters into the transaction while physically present in another state.

(3) Part 1 of article 5 of this title and sections 5-3-104 and 5-3-105 apply to actions or other proceedings brought in this state to enforce rights arising out of a consumer credit transaction, or modification thereof, wherever made.

(4) If a consumer credit transaction, or modification thereof, is made in another state with a person who is a resident of this state when the consumer credit transaction or modification is made, the following provisions apply as though the transaction occurred in this state:

(a) A creditor, or assignee of the creditor's rights, may not collect charges through actions or other proceedings in excess of those permitted by this code; and

(b) A creditor, or assignee of the creditor's rights, may not enforce rights against the consumer that violate the provisions of this code on limitations on agreements and practices.

(5) Except as provided in subsection (3) of this section, a consumer credit transaction, or modification thereof, made in another state with a person who was not a resident of this state when the consumer credit transaction or modification was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(6) For the purposes of this code, the "residence" of a consumer is the address given by the consumer as the consumer's residence in any writing provided by the consumer in connection with a credit transaction. Until the consumer notifies the creditor of a new or different address, the given address is presumed to be unchanged.

(7) Notwithstanding other provisions of this section:

(a) Except as provided in subsection (3) of this section, this code does not apply if the consumer is not a resident of this state at the time of a credit transaction and the parties then agree that the law of the consumer's residence applies; and

(b) This code applies if the consumer is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(8) Except as provided in subsection (7) of this section, an agreement by a consumer is invalid with respect to consumer credit transactions, or modifications thereof, to which this code applies when such agreement provides that:

(a) The law of another state shall apply;

(b) The consumer consents to the jurisdiction of another state; or

(c) Venue is fixed.

(9) The following provisions of this code specify the applicable law governing certain cases:

(a) Section 5-6-102 on the powers and functions of the administrator; and

(b) Section 5-6-201 on notification and fees.

(10) For the purpose of subsection (1) of this section, "receive" means obtained as a result of physical delivery, transmission, or communication to one who has actual or apparent authority to act for the creditor in this state whether or not approval, acceptance, or ratification by any other agent or representative of such creditor in some other state is necessary to give legal consequence to the consumer credit transaction.

(11) Notwithstanding any other provision of this section, this code applies to any consumer insurance premium loan made to a resident of this state.

5-1-202. Exclusions.

(1) This code does not apply to:

(a) Extensions of credit to government or governmental agencies or instrumentalities;

(b) Except as otherwise provided in article 4 of this title, the sale of insurance if there is no legal obligation to pay installments of the premium and the insurance may terminate or be canceled after nonpayment of an installment of the premium;

(c) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment;

(d) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters;

(e) The disclosure of rates and charges in connection with transactions in securities and commodities accounts by a broker-dealer registered with the securities and exchange commission;

(f) Loans made, originated, disbursed, serviced, or guaranteed by an agency, instrumentality, or political subdivision of the state pursuant to article 3.1 of title 23, C.R.S.

5-1-203. Jurisdiction and service of process.

(1) The court of record of any judicial district in this state may exercise jurisdiction over any creditor with respect to any conduct in this state governed by this code or with respect to any claim arising from a transaction subject to this code. In addition to any other method provided by the Colorado rules of civil procedure or by statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in the court of record by the service of process in the manner provided by this section.

(2) If a creditor is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by this code or engages in a transaction subject to this code, the creditor may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing and filed with the secretary of state. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state, but service upon the secretary of state is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his or her last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

PART 3

DEFINITIONS

5-1-301. General definitions.

In addition to definitions appearing in subsequent articles, as used in this code, unless the context otherwise requires:

(1) "Actuarial method" means the method, defined by rules promulgated by the administrator in accordance with article 4 of title 24, C.R.S., of allocating payments made on a debt between the amount financed and finance charge pursuant to which a payment is applied first to the accumulated finance charge and the balance subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(2) "Administrator" means the administrator designated in section 5-6-103.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(5) "Amount financed" means the total of the following items to the extent that payment is deferred:

(a) In the case of a sale:

(I) The cash price of the goods, services, or interest in land, less the amount of any down payment whether made in cash or in property traded in; and

(II) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in;

(b) In the case of a loan:

(I) The net amount paid to, receivable by, or paid or payable for the account of the debtor; and

(II) The amount of any discount excluded from the finance charge described in paragraph (c) of subsection (20) of this section; and

(c) In the case of a sale or loan, to the extent that payment is deferred and the amount is not otherwise included in the cash price:

(I) Any applicable sales, use, excise, or documentary stamp taxes;

(II) Amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees; and

(III) Additional charges permitted by this code described in section 5-2-202.

(6) "Business day" means any calendar day except Sunday, New Year's day, the third Monday in January observed as the birthday of Dr. Martin Luther King, Jr., Washington-Lincoln day, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, and Christmas day.

(7) (a) "Cash price" means, except as the administrator may otherwise prescribe by rule promulgated in accordance with article 4 of title 24, C.R.S., the price at which goods, services, or an interest in land is offered for sale by the seller to cash buyers in the ordinary course of business and may include the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations, modifications, and improvements and, if individually itemized, may also include:

(I) Applicable sales, use, and excise and documentary stamp taxes; and

(II) Amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees.

(b) The cash price stated by the seller to the buyer pursuant to the provisions on disclosure contained in section 5-3-101 is presumed to be the cash price.

(8) "Closing costs" with respect to a debt secured by an interest in land includes:

(a) Fees or premiums for title examination, title insurance, or similar purposes including surveys;

(b) Fees for preparation of a deed, settlement statement, or other documents;

(c) Escrows for future payments of taxes and insurance;

(d) Fees for notarizing deeds and other documents;

(e) Appraisal fees; and

(f) Credit reports.

(9) "Conspicuous" means a term or clause that is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court. A printed heading in capitals (as: WARRANTY) is conspicuous, and language in the body of the form is conspicuous if it is in larger or other contrasting type or color. In a telegram, any stated term is conspicuous.

(10) "Consumer" means a person other than an organization who is the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

(11) (a) "Consumer credit sale" means, except as provided in paragraph (b) of this subsection (11), a sale of goods, services, a mobile home, or an interest in land in which:

(I) Credit is granted or arranged by a person who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;

(II) The buyer is a person other than an organization;

(III) The goods, services, mobile home, or interest in land are purchased primarily for a personal, family, or household purpose;

(IV) Either the debt is by written agreement payable in installments or a finance charge is made; and

(V) With respect to a sale of goods or services, the amount financed does not exceed seventy-five thousand dollars.

(b) Unless the sale is made subject to this code by section 5-2-501, "consumer credit sale" does not include:

(I) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement;

(II) (A) Except as required by the federal "Truth in Lending Act" or the federal "Consumer Leasing Act" with respect to disclosure contained in section 5-3-101 and consumers' remedies for transactions secured by interests in land as contained in section 5-5-204, a sale of a mobile home or a sale of an interest in land if the finance charge does not exceed twelve percent per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term or, notwithstanding the rate of the finance charge with respect to the sale of an interest in land, the sale is secured by a first mortgage or deed of trust lien against a dwelling to finance the acquisition of that dwelling.

(B) For the purposes of this subparagraph (II), "dwelling" means any improved real property or portion thereof that is used or intended to be used as a residence and contains not more than four dwelling units, and "first mortgage or deed of trust" means a mortgage or deed of trust having priority as a lien over the lien of any other mortgage or deed of trust on the same dwelling and subject to the lien of taxes levied on that dwelling.

(III) A sale for a business, investment, or commercial purpose; or

(IV) A sale primarily for an agricultural purpose.

(12) "Consumer credit transaction" means a consumer credit sale or consumer loan, or a refinancing or consolidation thereof, or a consumer lease.

(13) "Consumer insurance premium loan" means a consumer loan that:

(a) Is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one or more policies or contracts issued by or on behalf of an insurer;

(b) Is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract; and

(c) Contains an authorization to cancel the policy or contract so financed.

(14) (a) "Consumer lease" means a lease of goods and includes any insurance incidental to the lease and any other services merely incidental to upkeep or repair of the goods:

(I) That a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, or household purpose;

(II) In which the amount payable under the lease does not exceed seventy-five thousand dollars; and

(III) That is for a term exceeding four months.

(b) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

(15) (a) Except as provided in paragraph (b) of this subsection (15) and except with respect to a "loan primarily secured by an interest in land" as defined in subsection (26) of this section, "consumer loan" means a loan made or arranged by a person regularly engaged in the business of making loans in which:

(I) The consumer is a person other than an organization;

(II) The debt is incurred primarily for a personal, family, or household purpose;

(III) Either the debt is by written agreement payable in installments or a finance charge is made; and

(IV) Either the principal does not exceed seventy-five thousand dollars or the debt is secured by an interest in land.

(b) Unless the loan is made subject to this code by an agreement described in section 5-2-501, "consumer loan" does not include:

(I) A loan for a business, investment, or commercial purpose;

(II) A loan primarily for an agricultural purpose; or

(III) A reverse mortgage as defined in section 11-38-102, C.R.S.

(c) Unless the loan is made subject to this code by an agreement described in section 5-2-501 and except as provided with respect to the disclosure described in section 5-3-101, consumers' remedies for transactions secured by interests in land as described in section 5-5-204, and powers and functions of the administrator under part 1 of article 6 of this title, "consumer loan" does not include a "loan primarily secured by an interest in land" as defined in subsection (26) of this section.

(16) "Credit" means the right granted by a creditor to a consumer to defer payment of debt or to incur debt and defer its payment.

(16.5) "Credit card" means a lender credit card or a seller credit card, except as otherwise provided in this code.

(17) "Creditor" means the seller, lessor, lender, or person who makes or arranges a consumer credit transaction and to whom the transaction is initially payable, or the assignee of a creditor's right to payment, but use of the term does not in itself impose on an assignee any obligation of his or her assignor. In case of credit granted pursuant to a credit card, "creditor" means the card issuer and not another person honoring the credit card.

(18) "Dwelling" means a residential structure or mobile home that contains one to four family housing units or individual units of condominiums or cooperatives.

(19) "Earnings" means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, fees, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

(20) "Finance charge" means:

(a) The sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the consumer, the creditor, or any other person on behalf of the consumer to the creditor or to a third party, including any of the following types of charges that are applicable:

(I) Interest or any amount payable under a point, discount, or other system of charges, however denominated;

(II) Time-price differential, credit service, service, carrying, or other charge, however denominated;

(III) Premium, or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss; and

(IV) Charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit.

(b) The term does not include charges as a result of default described in section 5-3-302, additional charges described in section 5-2-202, delinquency charges described in section 5-2-203, or deferral charges described in section 5-2-204.

(c) If a creditor makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant to a credit card or similar arrangement and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the finance charge.

(21) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates but excludes money, chattel paper, documents of title, and instruments.

(22) "Investment purpose" means that the primary purpose of the credit sale or loan is for future financial gain rather than for a present personal, family, or household use.

(23) "Lender" includes an assignee of the lender's right to payment, unless otherwise provided in this code, but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(24) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a consumer the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

(a) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the consumer;

(b) By the lender's payment or agreement to pay the consumer's obligations; or

(c) By the lender's purchase from the obligee of the consumer's obligations.

(25) "Loan" includes:

(a) Except as otherwise provided in paragraph (b) of this subsection (25):

(I) The creation of debt by the lender's payment of or agreement to pay money to the consumer or to a third party for the account of the consumer;

(II) The creation of debt by a credit to an account with the lender upon which the consumer is entitled to draw immediately;

(III) The creation of debt pursuant to a lender credit card in any manner, including a cash advance or the card issuer's honoring a draft or similar order for the payment of money drawn or accepted by the consumer, paying or agreeing to pay the consumer's

obligation, or purchasing or otherwise acquiring the consumer's obligation from the obligee or his or her assignees;

(IV) The forbearance of debt arising from a loan; and

(V) The creation of debt by a cash advance to a consumer pursuant to a seller credit card.

(b) "Loan" does not include:

(I) A card issuer's payment or agreement to pay money to a third person for the account of a consumer if the debt of the consumer arises from a sale or lease and results from use of a seller credit card; or

(II) The forbearance of debt arising from a sale or lease.

(26) (a) "Loan primarily secured by an interest in land" means a consumer loan secured by a mobile home or primarily secured by an interest in land if, at the time the loan is made the value of the collateral is substantial in relation to the amount of the loan, and:

(I) The rate of the finance charge does not exceed twelve percent per year calculated according to the actuarial method on the unpaid balances of the principal on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term; or

(II) Notwithstanding the rate of the finance charge, and other than a precomputed loan as defined in subsection (35) of this section, the loan is secured by a first mortgage or deed of trust lien against a dwelling to:

(A) Finance the acquisition of that dwelling; or

(B) To refinance, by amendment, payoff, or otherwise, an existing loan made to finance the acquisition of that dwelling, including a refinance loan providing additional sums for any purpose whether or not related to acquisition or construction.

(b) As to any refinance loan in the form of a revolving loan account that is in whole or in part for purposes other than acquisition or construction, section 5-3-103 shall apply.

(c) With respect to loans secured by a first mortgage or deed of trust lien against a dwelling to refinance an existing loan to finance the acquisition of the dwelling and providing additional sums for any other purpose that are not subject to this code pursuant to paragraph (a) of this subsection (26), the lender shall disclose to the consumer that the refinance loan creates a lien against the dwelling or property and that the limits set forth in section 5-5-112 on the amount of attorney fees that a lender may charge the consumer are not applicable.

(d) For purposes of this subsection (26):

(I) A "loan secured by a first mortgage or deed of trust lien against a dwelling to finance the acquisition of the dwelling" includes a loan secured by a first mortgage or deed of trust lien against a dwelling to finance the original construction of such dwelling or to refinance any such construction loan;

(II) "Dwelling" means any improved real property, or portion thereof, that is used or intended to be used as a residence and contains not more than four dwelling units; and

(III) "First mortgage or deed of trust" means a mortgage or deed of trust having priority as a lien over the lien of any other mortgage or deed of trust on the same dwelling and subject to the lien of taxes levied on that dwelling.

(27) "Material disclosures" means the disclosure, as required by this code, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, and the due dates or periods of payments scheduled to repay the indebtedness.

(28) "Merchandise certificate" means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(29) "Mobile home" means a dwelling that is built on a chassis designed for long-term residential occupancy, that is capable of being installed in a permanent or semi-permanent location, with or without a permanent foundation, and with major appliances and plumbing, gas, and electrical systems installed but needing the appropriate connections to make them operable, and that may be occasionally drawn over the public highways, by special permit, as a unit or in sections to its permanent or semi-permanent location.

(30) "Official fees" means:

(a) Fees and charges prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit transaction; or

(b) Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the consumer credit transaction if the premium does not exceed the fees and charges described in paragraph (a) of this subsection (30) that would otherwise be payable.

(31) "Organization" means a corporation, limited liability company, government or governmental subdivision or agency, trust, estate, partnership, limited liability partnership, cooperative, or association.

(32) "Payable in installments" means that payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other

periodic payment, excluding the down payment, the consumer credit transaction is "payable in installments".

(33) "Person" includes a natural person or an individual and an organization.

(34) (a) "Person related to" means, with respect to an individual, the spouse of the individual; a brother, brother-in-law, sister, or sister-in-law of the individual; an ancestor or lineal descendant of the individual or the individual's spouse; and any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(b) "Person related to" means, with respect to an organization, a person directly or indirectly controlling, controlled by, or under common control with the organization; an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization; the spouse of a person related to the organization; and a relative by blood or marriage of a person related to the organization who shares the same home with such person.

(35) "Precomputed" means a consumer credit sale or consumer loan in which the debt is expressed as a sum comprising the amount financed and the amount of the finance charge computed in advance or in which any portion of the finance charge is prepaid and the amount of that portion of the finance charge either computed in advance or prepaid constitutes more than one-half of the total finance charge applicable to the consumer credit sale or consumer loan.

(36) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced that would support a finding of its nonexistence.

(37) "Regularly" has the same meaning as stated in the federal "Truth in Lending Act" and the federal "Consumer Leasing Act".

(38) "Revolving credit" means an arrangement pursuant to which:

(a) A creditor may permit a consumer, from time to time, to purchase or lease on credit from the creditor or to obtain loans from the creditor;

(b) The amounts financed and the finance and other appropriate charges are debited to an account;

(c) The finance charge, if made, is computed on the account periodically; and

(d) Either the consumer has the privilege of paying in full or in installments or the creditor periodically imposes charges computed on the account for delaying payment and permits the consumer to continue to purchase or lease on credit.

(39) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially

equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his or her obligations under the agreement.

(40) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(41) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(42) "Seller", except as otherwise provided, includes an assignee of the seller's right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

(43) "Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person or from that person and any other person.

(44) "Services" includes:

(a) Work, labor, and other personal services;

(b) Privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and

(c) Insurance provided by a person other than the insurer.

(45) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered, or holding an authorization certificate under the laws of any state or of the United States that authorize the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and

(b) Subject to supervision by an official or agency of any state or of the United States.

(46) "Supervised lender" means a person authorized to make or take assignments of supervised loans under a license issued by the administrator or as a supervised financial organization.

(47) "Supervised loan" means a consumer loan, including a loan made pursuant to a revolving credit account, in which the rate of the finance charge exceeds twelve percent per year as determined according to the provisions on finance charges contained in section 5-2-201.

(48) "Written" or "in writing" means any record conveying information and that is in a form the consumer may retain, or is capable of being displayed in visual text in a form the consumer may retain, including paper, electronic, digital, magnetic, optical, and electromagnetic.

5-1-302. Definitions - federal "Truth in Lending Act" and federal "Consumer Leasing Act".

In this code, federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq., and federal "Consumer Leasing Act", 15 U.S.C. sec. 1667 et seq., mean chapters of the "Consumer Credit Protection Act" (Public Law 90-321; 82 Stat. 146), as amended from time to time, and include regulations issued pursuant to those acts.

5-1-303. Index of definitions in code.

Definitions in this code and the sections in which they appear are:

"Actuarial method"	section 5-1-301 (1)
"Administrator"	sections 5-1-301 (2) and 5-6-103
"Agreement"	section 5-1-301 (3)
"Agricultural purpose"	section 5-1-301 (4)
"Amount financed"	section 5-1-301 (5)
"Business day"	section 5-1-301 (6)
"Cash price"	section 5-1-301 (7)
"Closing costs"	section 5-1-301 (8)
"Conspicuous"	section 5-1-301 (9)
"Consumer"	section 5-1-301 (10)
"Consumer credit insurance"	section 5-4-103 (1)
"Consumer credit sale"	section 5-1-301 (11)
"Consumer credit transaction"	section 5-1-301 (12)
"Consumer insurance premium loan"	section 5-1-301 (13)
"Consumer lease"	section 5-1-301 (14)
"Consumer loan"	section 5-1-301 (15)
"Credit"	section 5-1-301 (16)
"Credit card bank or financial institution"	section 5-2-213 (1)
"Creditor"	section 5-1-301 (17)
"Credit Insurance Act"	section 5-4-103 (2)
"Dwelling"	section 5-1-301 (18)
"Earnings"	section 5-1-301 (19)
"Federal 'Truth in Lending Act'" and "Federal 'Consumer Leasing Act'"	section 5-1-302
"Finance charge"	section 5-1-301 (20)
"Goods"	section 5-1-301 (21)
"Home solicitation sale"	section 5-3-401
"Investment purpose"	section 5-1-301 (22)
"Lender"	section 5-1-301 (23)
"Lender credit card or similar arrangement"	section 5-1-301 (24)
"Loan"	section 5-1-301 (25)

"Loan primarily secured by an interest in land"	section 5-1-301 (26)
"Material disclosures"	section 5-1-301 (27)
"Merchandise certificate"	section 5-1-301 (28)
"Mobile home"	section 5-1-301 (29)
"Official fees"	section 5-1-301 (30)
"Organization"	section 5-1-301 (31)
"Payable in installments"	section 5-1-301 (32)
"Person"	section 5-1-301 (33)
"Person related to"	section 5-1-301 (34)
"Precomputed"	section 5-1-301 (35)
"Presumed" or "Presumption"	section 5-1-301 (36)
"Receive"	section 5-1-201 (10)
"Regularly"	section 5-1-301 (37)
"Residence"	section 5-1-201 (6)
"Revolving credit"	section 5-1-301 (38)
"Sale of goods"	section 5-1-301 (39)
"Sale of an interest in land"	section 5-1-301 (40)
"Sale of services"	section 5-1-301 (41)
"Seller"	section 5-1-301 (42)
"Seller credit card"	section 5-1-301 (43)
"Services"	section 5-1-301 (44)
"Supervised financial organization"	section 5-1-301 (45)
"Supervised lender"	section 5-1-301 (46)
"Supervised loan"	section 5-1-301 (47)
"Written" or "In writing"	section 5-1-301 (48)

ARTICLE 2
FINANCE CHARGES AND RELATED PROVISIONS

PART 1
GENERAL PROVISIONS

5-2-101. Short title.

This article shall be known and may be cited as "Uniform Consumer Credit Code - Finance Charges and Related Provisions".

5-2-102. Scope.

For purposes of this article, "consumer credit transaction" applies to consumer loans, including supervised loans, consumer credit sales, and refinancing and consolidations of these transactions but does not include consumer leases except for the charges and procedures in sections 5-2-202 and 5-2-203. The provisions concerning credit card surcharges contained in section 5-2-212 apply to all sales and leases.

PART 2
MAXIMUM FINANCE CHARGES AND OTHER FEES AND CHARGES

5-2-201. Finance charge for consumer credit transactions.

(1) With respect to a consumer loan other than a supervised loan, including a revolving loan, a lender may contract for and receive a finance charge calculated according to the actuarial method not exceeding twelve percent per year on the unpaid balance of the amount financed.

(2) With respect to a supervised loan or a consumer credit sale, except for a loan or sale pursuant to a revolving account, a supervised lender or seller may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding the equivalent of the greater of either of the following:

(a) The total of:

(I) Thirty-six percent per year on that part of the unpaid balances of the amount financed that is one thousand dollars or less;

(II) Twenty-one percent per year on that part of the unpaid balances of the amount financed that is more than one thousand dollars but does not exceed three thousand dollars; and

(III) Fifteen percent per year on that part of the unpaid balances of the amount financed that is more than three thousand dollars; or

(b) Twenty-one percent per year on the unpaid balances of the amount financed.

(3) (a) Except as provided in paragraph (b) of this subsection (3), the finance charge for a supervised loan or consumer credit sale pursuant to a revolving credit account, calculated according to the actuarial method, may not exceed twenty-one percent per year on the unpaid balance of the amount financed.

(b) Notwithstanding paragraph (a) of this subsection (3), if there is an unpaid balance on the date as of which the finance charge is applied, the creditor may contract for and receive a minimum finance charge not exceeding fifty cents.

(4) (a) Except as provided in paragraph (b) of this subsection (4), this section does not limit or restrict the manner of contracting for the finance charge, whether by way of add-on, discount, single annual percentage rate, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section.

(b) A seller or lender may contract for the payment by a consumer of a prepaid finance charge. In addition to any other disclosure required by this code, a seller or lender shall disclose to the consumer the amount of any such prepaid finance charge.

(c) If the consumer credit transaction is precomputed:

(I) The finance charge may be calculated on the assumption that all scheduled payments will be made when due;

(II) The effect of prepayment is governed by the provisions on rebate upon prepayment contained in section 5-2-211.

(5) Except as provided in subsection (8) of this section, the term of a consumer credit transaction, for the purposes of this section, commences on the date the consumer credit transaction is made. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth of a month. Subject to classifications and differentiations the creditor may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(6) Subject to classifications and differentiations the creditor may reasonably establish, the creditor may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate this section if:

(a) When applied to the median amount within each range, it does not exceed the maximum permitted in this section; and

(b) When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph (a) of this subsection (6) by more than eight percent of such rate.

(7) Notwithstanding the provisions of subsections (1), (2), and (3) of this section, the creditor, in connection with a consumer credit transaction other than a deferred deposit loan as defined in section 5-3.1-102 (3) or one pursuant to a revolving credit account, may contract for and receive a minimum loan finance charge of not more than twenty-five dollars.

(8) With respect to a consumer insurance premium loan, the term of the loan commences on the earliest inception date of a policy or contract of insurance on which payment of the premium is financed by the loan.

5-2-202. Additional charges.

(1) In addition to the finance charge permitted by this article and in a consumer lease, a creditor may contract for and receive the following additional charges in connection with a consumer credit transaction:

(a) Official fees and taxes;

(b) Charges for insurance as described in subsection (3) of this section;

(c) Annual charges, payable in advance, for the privilege of using a credit card or similar arrangement;

(d) Charges for other benefits conferred on the consumer, including insurance, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type that is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator;

(e) The following charges if agreed to by the parties:

(I) A charge, not to exceed the greater of two dollars or two and one-half percent of the amount advanced, for each cash advance transaction made pursuant to a credit card; and

(II) A fee, not to exceed twenty-five dollars, assessed upon return or dishonor of a check or other instrument tendered as payment.

(2) No finance charge may be assessed on any charge listed in paragraph (e) of subsection (1) of this section.

(3) An additional charge may be made for insurance written in connection with the transaction, other than insurance protecting the creditor against the consumer's default or other credit loss, if:

(a) With respect to insurance against loss of or damage to property or against liability, the creditor furnishes a clear and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained; and

(b) With respect to consumer credit insurance providing life, accident, or health coverage, the insurance coverage is not a factor in the approval by the creditor of the extension of credit and this fact is clearly disclosed in writing to the consumer and if, in order to obtain the insurance in connection with the extension of credit, the consumer

gives specific affirmative written indication of the consumer's desire to do so after written disclosure to the consumer of the cost thereof.

(4) With respect to a debt secured by an interest in land, bona fide and reasonable closing costs described in section 5-1-301 (8) are additional charges.

5-2-203. Delinquency charges.

(1) With respect to a consumer credit transaction, the parties may contract for a delinquency charge on any installment or minimum payment not paid in full within ten days after its scheduled due date in an amount not exceeding:

(a) Fifteen dollars for a transaction not secured by an interest in land; except that, if the transaction is precomputed, the amount may not exceed the greater of fifteen dollars or the deferral charge described in section 5-2-204 (1) that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent; or

(b) Five percent of the unpaid amount of the installment or minimum payment due for a transaction secured by an interest in land.

(2) A delinquency charge under this section may be collected only once on an installment or minimum payment however long it remains in default. No delinquency charge may be collected if the installment or minimum payment has been deferred and a deferral charge described in section 5-2-204 has been paid or incurred until ten days after the deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment or minimum payment that is paid in full within ten days after its scheduled installment due date even though an earlier maturing installment, minimum payment, or a delinquency charge on an earlier installment or minimum payment may not have been paid in full. For purposes of this subsection (3), payments are applied first to current installments or minimum payments due and then to delinquent installments or minimum payments due.

(4) (a) A creditor who has imposed a delinquency charge shall notify the consumer in writing of the amount of the delinquency charge assessed as follows:

(I) Before the due date of the next scheduled payment;

(II) If the creditor provides the consumer with periodic statements for each installment, on or with the next periodic statement provided to the consumer after the delinquency charge has been assessed; or

(III) For a revolving credit account for which a credit card is issued and that is not secured by an interest in land, before, on, or with the next periodic statement after the delinquency charge has been assessed.

(b) A creditor shall not assess a delinquency charge unless the delinquency charge is assessed within thirty days after the scheduled due date of any installment not paid in full

or, for a revolving credit account for which a credit card is issued and that is not secured by an interest in land, within ninety days after the scheduled due date of the delinquent minimum payment.

(5) No finance charge may be assessed on any delinquency charge. For purposes of this section, for revolving credit, an installment is the minimum payment that the debtor is required to make during any billing cycle excluding any past-due amount from any previous billing cycle.

(6) If two installments or parts thereof of a precomputed transaction are in default for ten days or more, the creditor may elect to convert the transaction from a precomputed transaction to one in which the finance charge is based on unpaid balances, and the terms of the converted transaction shall be no less favorable to the consumer than the terms of the original transaction. In this event the creditor shall make a rebate pursuant to the provisions on rebate upon prepayment contained in section 5-2-211 as of the maturity date of the first delinquent installment and thereafter may make a finance charge as authorized by the provisions on finance charges. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge described in section 5-2-201. If the creditor proceeds under this subsection (6), any delinquency or deferral charges made with respect to installments due at or after the maturity date of the first delinquent installment shall be rebated and no further delinquency or deferral charges shall be made.

5-2-204. Deferral charges.

(1) With respect to a precomputed consumer credit transaction, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the creditor may make and collect a charge not exceeding the rate previously stated to the consumer pursuant to the provisions on disclosure contained in section 5-3-101 applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in the lengths of months, but proportionally for a part of a month, counting each day as one-thirtieth of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The creditor, in addition to the deferral charge, may make appropriate additional charges described in section 5-2-202, and the amount of these charges that is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer credit transaction that, if an installment is not paid within ten days after its due date, the creditor may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the creditor elects to accelerate the maturity of the agreement.

(4) A delinquency charge made by the creditor on an installment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

(5) A deferral charge made according to this section is earned pro rata during the period in which no installment is scheduled to be paid by reason of the deferral and is fully earned on the last day of that period.

5-2-205. Finance charge on refinancing.

(1) With respect to a consumer credit transaction, the creditor may by agreement with the consumer refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on finance charges. For the purpose of determining the finance charge permitted, the amount financed resulting from the refinancing comprises the following:

(a) If the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount that the consumer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment contained in section 5-2-211 on the date of refinancing; except that, for the purpose of computing this amount, no minimum charge described in section 5-2-201 shall be allowed; and

(b) Appropriate additional charges described in section 5-2-202, payment of which is deferred.

5-2-206. Finance charge on consolidation.

If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer credit transaction was not precomputed, the parties may agree to add the unpaid amount of the amount financed and accrued charges on the date of consolidation to the amount financed with respect to the subsequent consumer credit transaction. If the previous consumer credit transaction was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing contained in section 5-2-205 and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent consumer credit transaction. In either case, the creditor may contract for and receive a finance charge based on the aggregate amount financed resulting from the consolidation at a rate not in excess of that permitted by the provisions on finance charges.

5-2-207. Prepaid finance charge.

(1) Subject to the provisions of subsection (2) of this section, a creditor may contract for the payment by the consumer of a prepaid finance charge; except that the total finance charge contracted for and received by the creditor shall not exceed that permitted for consumer credit transactions.

(2) With respect to a refinancing pursuant to section 5-2-205 or consolidation pursuant to section 5-2-206 of a previous consumer credit transaction for which a prepaid finance charge was imposed, if said refinancing or consolidation is consummated within one year after the previous transaction, a new prepaid finance charge may be imposed:

(a) Only on that portion of the aggregate amount financed resulting from the refinancing or consolidation that exceeds the unpaid balance of the previous transaction determined in accordance with the provisions of section 5-2-205 or section 5-2-206, whichever is appropriate; or

(b) On the aggregate amount financed resulting from the refinancing or consolidation; except that any unearned portion of the prepaid finance charge imposed in connection with the previous transaction shall be rebated to the consumer in accordance with the actuarial method as defined in section 5-1-301 and applicable rules adopted by the administrator.

5-2-208. Conversion to revolving account.

The parties may agree to add to a revolving account the unpaid balance of a consumer credit transaction not made pursuant to a revolving account. The unpaid balance is an amount equal to the amount financed determined according to the provisions on refinancing contained in section 5-2-205.

5-2-209. Advances to perform covenants of consumer.

(1) If the agreement with respect to a consumer credit transaction contains covenants by the consumer to perform certain duties pertaining to insuring or preserving collateral, and the creditor pursuant to the agreement pays for performance of the duties on behalf of the consumer, the creditor may add the amounts paid to the debt if:

(a) The expenditure is reasonable to protect the risk of loss or damage to the property;

(b) The creditor has mailed to the consumer, at the consumer's last known address, written notice of the consumer's nonperformance and has given the consumer reasonable opportunity after such notice to so perform; and

(c) In the absence of performance, the creditor has made all expenditures on behalf of the consumer in good faith and in a commercially reasonable manner.

(2) Within a reasonable time after advancing any sums, the creditor shall state to the consumer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule, and, if the duties of the consumer performed by the creditor pertain to insurance, a brief description of the insurance paid for by the creditor including the type and amount of coverage. No further information need be given.

(3) A finance charge may be made for sums advanced pursuant to this section at a rate not exceeding the rate stated to the consumer pursuant to the provisions on disclosure contained in section 5-3-101 with respect to the consumer credit transaction; except that, with respect to a revolving account, the amount of the advance may be added to the unpaid balance of the debt and the creditor may make a finance charge not exceeding that permitted by the provisions on finance charges.

5-2-210. Right to prepay.

Subject to the provisions on rebate upon prepayment contained in section 5-2-211, the consumer may prepay in full, or in part if payment is no less than five dollars, the unpaid balance of a consumer credit transaction at any time without penalty. A payment in the amount of a scheduled installment, other than the last scheduled installment, not identified by the consumer as a partial prepayment shall not be deemed to be a partial prepayment regardless of when the payment is made if the amount equals the next scheduled installment. If such a payment is applied by the creditor to the scheduled installment, the payment shall be deemed to have been made on the due date for the scheduled installment to which it was applied.

5-2-211. Rebate upon prepayment - definitions.

(1) Except as otherwise provided in this section, upon prepayment in full of the unpaid balance of a precomputed consumer credit transaction, an amount not less than the unearned portion of the finance charge calculated according to this section shall be rebated to the consumer. If the rebate otherwise required is less than one dollar, no rebate need be made.

(2) Upon prepayment in full of a consumer credit transaction, other than one pursuant to a revolving account, a refinancing, or a consolidation, whether or not precomputed, the creditor may collect or retain a minimum charge within the limits stated in this subsection (2) if the finance charge earned at the time of prepayment is less than any minimum charge contracted for. The minimum charge may not exceed the lesser of the amount of finance charge contracted for or twenty-five dollars.

(3) (a) Except as otherwise provided in this section, the unearned portion of the finance charge is a fraction of the finance charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the consumer credit agreement or, if the balance owing resulted from a refinancing described in section 5-2-205 or a consolidation described in section 5-2-206, under the refinancing agreement or consolidation agreement.

(b) With respect to a precomputed transaction entered into on or after October 28, 1975, and payable according to its original terms in more than sixty-one installments or on any precomputed transaction entered into on or after January 1, 1982, the unearned portion of the finance charge is, at the option of the lender, either:

(I) That portion that is applicable to all fully unexpired computational periods as originally scheduled, or if deferred, as deferred, that follow the date of prepayment. For this purpose, the applicable charge is the total of that which would have been made for each such period, had the consumer credit transaction not been precomputed, by applying to unpaid balances of the amount financed, according to the actuarial method, the annual percentage rate of charge previously stated to the consumer pursuant to the provisions on disclosure contained in section 5-3-101 based upon the assumption that all payments were made as originally scheduled, or if deferred, as deferred. The creditor, at the creditor's option, may round the annual percentage rate to the nearest one-half of one

percent so long as such procedure is not consistently used to obtain a greater yield than would otherwise be permitted; or

(II) The total finance charge minus the earned finance charge. The earned finance charge shall be determined by applying the annual percentage rate previously stated to the consumer pursuant to the provisions on disclosure contained in section 5-3-101 according to the actuarial method to the actual unpaid balances for the actual time the balances were unpaid up to the date of prepayment. If a delinquency or deferral charge was collected, it shall be treated as a payment.

(c) In the case of a consumer credit transaction primarily secured by an interest in land, reasonable sums actually paid or payable to persons not related to the creditor for customary closing costs included in the finance charge shall be deducted from the finance charge before the calculation prescribed by this subsection (3) is made.

(4) As used in this section, unless the context otherwise requires:

(a) "Computational period" means one month if one-half or more of the intervals between scheduled payments under the agreement is one month or more and otherwise means one week.

(b) The "interval" to the due date of the first scheduled installment or the final scheduled payment date is measured from the date of a consumer credit transaction and includes either the first or last day of the interval. If the interval to the due date of the first scheduled installment does not exceed one month by more than fifteen days when the computational period is one month or eleven days when the computational period is one week, the interval shall be considered as one computational period.

(c) "Periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day.

(5) (a) This subsection (5) applies only if the schedule of payments is not regular.

(b) If the computational period is one month and:

(I) If the number of days in the interval to the due date of the first scheduled installment is less than one month by more than five days or more than one month by more than five but not more than fifteen days, the unearned finance charge shall be increased by an adjustment for each day by which the interval is less than one month and, at the option of the creditor, may be reduced by an adjustment for each day by which the interval is more than one month; the adjustment for each day shall be one-thirtieth of that part of the finance charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one month; and

(II) If the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of

days shall be considered a computational period only if sixteen days or more. This subparagraph (II) applies whether or not subparagraph (I) of this paragraph (b) applies.

(c) Notwithstanding paragraph (b) of this subsection (5), if the computational period is one month, the number of days in the interval to the due date of the first installment exceeds one month by not more than fifteen days and the schedule of payments is otherwise regular, the creditor at the creditor's option may exclude the extra days and the charge for the extra days in computing the unearned finance charge; but if the creditor does so and a rebate is required before the due date of the first scheduled installment, the creditor shall compute the earned charge for each elapsed day as one-thirtieth of the amount the earned charge would have been if the first interval had been one month.

(d) If the computational period is one week and:

(I) If the number of days in the interval to the due date of the first scheduled installment is less than five days or more than nine days but not more than eleven days, the unearned finance charge shall be increased by an adjustment for each day by which the interval is less than seven days and, at the option of the creditor, may be reduced by an adjustment for each day by which the interval is more than seven days; the adjustment for each day shall be one-seventh of that part of the finance charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one week; and

(II) If the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if four days or more. This subparagraph (II) applies whether or not subparagraph (I) of this paragraph (d) applies.

(6) Except as otherwise provided in paragraph (b) of subsection (3) of this section, if a deferral described in section 5-2-204 has been agreed to, the unearned portion of the finance charge is the portion thereof attributable according to the sum of the balances method to the period from the first day of the computational period following that in which prepayment occurs; except that the numerator of the fraction is the sum of the periodic balances, after rescheduling to give effect to any deferral, scheduled to follow the computational period in which prepayment occurs. A separate rebate of the deferral charge is not required unless the unpaid balance of the transaction is paid in full during the deferral period, in which event the creditor shall also rebate the unearned portion of the deferral charge.

(7) Except as otherwise provided in paragraph (b) of subsection (3) of this section, this section does not preclude the collection or retention by the creditor of delinquency charges described in section 5-2-203.

(8) If the maturity is accelerated for any reason and judgment is obtained, the consumer is entitled to the same rebate as if payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a consumer credit transaction by the proceeds of consumer credit insurance described in section 5-4-103, the consumer or the consumer's estate is entitled to the same rebate as though the consumer had prepaid the agreement on the date the proceeds of the insurance are paid to the creditor but no later than ten business days after satisfactory proof of loss is furnished to the creditor.

5-2-212. Surcharges on credit transactions - prohibition.

(1) Except as otherwise provided in sections 24-19.5-103 (3) and 29-11.5-103 (3), C.R.S., no seller or lessor in any sales or lease transaction or any company issuing credit or charge cards may impose a surcharge on a holder who elects to use a credit or charge card in lieu of payment by cash, check, or similar means. A surcharge is any additional amount imposed at the time of the sales or lease transaction by the merchant, seller, or lessor that increases the charge to the buyer or lessee for the privilege of using a credit or charge card. For purposes of this section, charge card includes those cards pursuant to which unpaid balances are payable on demand.

(2) A discount offered by a seller or lessor for the purpose of inducing payment by cash, check, or other means not involving the use of a seller or lender credit card shall not constitute a finance charge if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the administrator.

5-2-213. Lender and seller credit cards.

(1) For purposes of this section, "credit card bank or financial institution" means a commercial bank, industrial bank, credit union, thrift, savings and loan association, savings bank, or other state or federally supervised institution in this state that issues credit cards and may export rates and fees pursuant to the "National Bank Act", 12 U.S.C. sec. 85, "Depository Institutions Deregulation and Monetary Control Act of 1980", 12 U.S.C. secs. 1463, 1785, and 1831d, "Federal Credit Union Act", 12 U.S.C. sec. 1757, or "Alternative Mortgage Transaction Parity Act of 1982", 12 U.S.C. secs. 3801 to 3805, and any regulations thereunder.

(2) Notwithstanding any other provisions of this part 2, with respect to a lender or seller credit card issued by a credit card bank or financial institution:

(a) The finance charge, calculated according to the actuarial method, may not exceed the amounts provided in section 5-2-201; and

(b) Any fees imposed for a minimum finance charge described in section 5-2-201 (3) (b), annual charges described in section 5-2-202 (1) (c), cash advances described in section 5-2-202 (1) (e) (I), return or dishonor of a check described in section 5-2-202 (1) (e) (II), delinquency described in section 5-2-203, or exceeding the credit limit may be in an amount established by written agreement of the parties.

5-2-214. Alternative charges for loans not exceeding one thousand dollars.

(1) For a consumer loan where the amount financed is not more than one thousand dollars, a supervised lender may charge, in lieu of the loan finance charges permitted by section 5-2-201, the following finance charges:

(a) An acquisition charge for making the original loan, not to exceed ten percent of the amount financed;

(a.5) An acquisition charge for making any refinanced loan, not to exceed seven and one-half percent of the amount financed; and

(b) A monthly installment account handling charge, not to exceed the following amounts:

Amount financed	Per month charge
$100.00 - $ 300	$12.50
$300.01 - $ 500	$15.00
$500.01 - $ 750	$17.50
$750.01 - $ 1,000	$20.00

(2) The minimum term of a loan made pursuant to this section shall be ninety days. The maximum term of a loan made pursuant to this section shall be twelve months. All loans shall be scheduled to be payable in substantially equal installments at equal periodic intervals.

(3) On a loan subject to the alternative charges authorized by this section, no other finance charge or any other charge or fee is permitted except as specifically provided for in this section and except for the delinquency charges provided for in section 5-2-203, reasonable attorney fees provided for in section 5-5-112, and the fee for a dishonored check provided for in section 5-2-202 (1) (e) (II).

(4) The acquisition charge authorized in this section shall be fully earned at the time the loan is made and shall not be subject to refund; except that, if the loan is prepaid in full, refinanced, or consolidated within the first sixty days, the first ten dollars of the acquisition charge shall be retained by the lender and the remainder of the acquisition charge shall be refunded at a rate of one-sixtieth of the remainder of the acquisition charge per day, beginning on the day after the date of the prepayment, refinancing, or consolidation and ending on the sixtieth day after the loan was made.

(5) Upon the prepayment of a loan made pursuant to this section, the unearned portion of the installment account handling charge shall be refunded to the consumer. The unearned portion of the installment account handling charge that is refunded shall be calculated pursuant to the provisions on rebate upon prepayment contained in section 5-2-211 on the date of refinancing; except that, for the purpose of computing this amount, no minimum charge described in section 5-2-201 shall be allowed.

(6) The rates and charges permitted by this section shall not apply to deferred deposit loans subject to article 3.1 of this title.

(7) A lender shall not take collateral from a consumer as security for payment for any loan made pursuant to this section.

(8) A lender may not refinance a loan made pursuant to this section more than three times in one year.

PART 3

SUPERVISED LOANS AND SUPERVISED LENDERS

5-2-301. Authority to make supervised loans.

(1) Unless a person is a supervised financial organization or has first obtained a license from the administrator authorizing him or her to make supervised loans, he or she shall not engage in the business of:

(a) Making supervised loans or undertaking direct collection of payments from or enforcement of rights against consumers arising from supervised loans he or she has previously made; or

(b) Taking assignments of and undertaking direct collection of payments from or enforcement of rights against consumers arising from supervised loans; except that a person who is licensed by the administrator as a collection agency pursuant to article 14 of title 12, C.R.S., or is licensed by the Colorado supreme court to practice law, and who takes assignment of supervised loans only after such loans are in default, is not required to obtain a supervised lender license to engage in the activities described in this paragraph (b).

5-2-302. License to make supervised loans.

(1) The administrator shall receive and act on all applications for licenses to make supervised loans under this code. Applications shall be filed in the manner prescribed by the administrator and shall contain such information as the administrator may reasonably require. No license shall be issued without payment of a nonrefundable license fee. The license year shall be the calendar year.

(2) No license shall be issued unless the administrator, upon investigation, finds that the financial responsibility, character, and fitness of the applicant and of the members, managers, partners, officers, and directors thereof are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this code. In determining financial responsibility of an applicant proposing to engage in making consumer insurance premium loans, the administrator shall consider the liabilities the lender may incur for erroneous cancellation of insurance. The administrator may deny an application for licensure for any of the grounds provided in section 5-2-303.

(3) (a) Upon written request, the applicant is entitled to a hearing on the question of the applicant's qualifications for a license if:

(I) The administrator has notified the applicant in writing that his or her application has been denied; or

(II) The administrator has not issued a license within sixty days after the application for the license was filed.

(b) A request for a hearing may not be made more than sixty days after the administrator has mailed a writing to the applicant notifying the applicant that the application has been denied and stating in substance the administrator's findings supporting denial of the application.

(4) If a supervised lender has more than one place of business, it must obtain a master license. The administrator may authorize the addition of branch locations to the master license. A separate license fee and proof of financial responsibility shall be required for each authorized branch location. Each master license and branch location license shall remain in full force and effect until surrendered, suspended, or revoked.

(5) (a) The application for approval of a branch location license may be more abbreviated than the application for a new or master supervised lender's license. An application for a branch location license may be filed by any means, including facsimile or electronic filing, followed by the license fee required by this section.

(b) Upon receipt of a completed branch location license application and the required license fee, the branch location is automatically licensed for a temporary period not to exceed one hundred twenty days. If the administrator does not deny the branch location application on or before the end of that period, the temporary branch location license shall become permanent. The administrator may deny an application for a branch location for any of the grounds provided in subsection (2) of this section and section 5-2-303.

(c) The administrator's approval of an additional branch location license may be provided by letter. No license certificate need be issued for a licensed branch location. All provisions of this part 3 relating to licenses apply equally to branch location licenses.

(6) No licensee shall change the location of any place of business or license without giving the administrator at least fifteen days prior written notice. The administrator may by rule promulgated in accordance with article 4 of title 24, C.R.S., establish an administrative fee for such a change of address.

(7) A licensee shall not engage in the business of making supervised loans at any place of business for which the licensee does not hold a license, nor shall a licensee engage in business under any other name than that in the license. The administrator may by rule establish an administrative fee for such a change of name. For the purposes of this subsection (7), a consumer insurance premium loan is made at the lender's business office.

(8) Each license shall be renewed by payment of a nonrefundable license fee and the filing of a renewal form. The fee and renewal form shall be due each January 31. If a licensee fails to pay the prescribed fee on or before March 1, it shall pay a penalty of five dollars per day per license from March 2 to the date the payment is postmarked. However, if a licensee fails to pay the appropriate renewal and penalty fees by March 15, its license shall automatically expire.

(9) (Deleted by amendment, L. 2009, (HB 09-1141), ch. 41, p. 157, 3, effective January 1, 2010.)

5-2-303. Denial and discipline of license.

(1) The administrator may deny an application for a license or take disciplinary action against a person licensed to make supervised loans if the administrator finds that:

(a) The applicant or licensee has violated this code or any rule or order lawfully made pursuant thereto;

(b) Facts or conditions exist that would clearly have justified the administrator in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made;

(c) The applicant has failed to complete an application for licensure;

(d) The applicant or licensee has failed to provide information required by the administrator within a reasonable time as fixed by the administrator;

(e) The applicant or licensee has failed to provide or maintain proof of financial responsibility;

(f) The applicant or licensee is insolvent;

(g) The applicant or licensee has made, in any document or statement filed with the administrator, a false representation of a material fact or has omitted to state a material fact;

(h) The applicant, licensee, or its owners, partners, members, officers, or directors have been convicted of or entered a plea of guilty or nolo contendere to a crime specified in part 4 of article 4 of title 18, C.R.S., or in part 1, 2, 3, 5, or 7 of article 5 of title 18, C.R.S., to a crime involving fraud or deceit, or to any similar crime under the jurisdiction of any federal court or court of another state;

(i) The applicant or licensee has failed to make, maintain, or produce records which comply with section 5-2-304 and any regulation adopted by the administrator;

(j) The applicant or licensee has been the subject of any disciplinary action by any state or federal agency;

(k) A final judgment has been entered against the applicant or licensee for violations of this code, any state or federal law concerning consumer finance, banking, or mortgage brokers or lenders, or any state or federal law prohibiting deceptive or unfair trade or business practices; or

(l) The applicant or licensee has failed to, in a timely manner as fixed by the administrator, take or provide proof of the corrective action required by the administrator subsequent to an examination or investigation pursuant to section 5-2-305 or 5-6-106.

(2) The administrator may summarily suspend a license as provided in section 24-4-104, C.R.S.

(3) Whenever the administrator denies a license application or takes disciplinary action pursuant to this section, the administrator shall enter an order to that effect and notify the licensee or applicant of the denial or disciplinary action. The notification required by this subsection (3) shall be given by personal service or by mail to the last known address of the licensee or applicant as shown on the application, license, or as subsequently furnished in writing to the administrator.

(4) Any person holding a license to make supervised loans may relinquish the license by notifying the administrator in writing of its relinquishment. The revocation, suspension, expiration, or relinquishment of a license shall not affect the licensee's liability for acts previously committed nor impair the administrator's ability to issue a final agency order or impose discipline against the licensee.

(5) No revocation, suspension, or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any consumer.

(6) The administrator may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists that clearly would have justified the administrator in refusing to grant a license.

(7) After a finding of one or more of the conditions stated in subsection (1) of this section, the administrator may take any or all of the following actions:

(a) Deny an application for licensure including an application for a branch office license;

(b) Revoke the license;

(c) Suspend the license for a period of time;

(d) Issue an order to the licensee to cease and desist from such acts;

(e) Order the licensee to make refunds to consumers of excess charges under this code;

(f) Impose penalties of up to a maximum of one thousand dollars for each violation all or part of which may be specifically designated for consumer and creditor educational expenses;

(g) Bar the person from applying for or holding a license for a period of five years following revocation of his or her license;

(h) Issue a letter of admonition; or

(i) Impose a penalty of two hundred dollars per day for failure to make, produce, or retain records required to be maintained under this code within forty-eight hours after the administrator's written demand. If the administrator has provided advance written notice of forty-eight hours or more to a licensee prior to conducting an examination pursuant to section 5-2-305, the penalty may be imposed without allowing additional time.

(8) The discipline stated in paragraphs (h) and (i) of subsection (7) of this section may be imposed without a hearing, but the licensee may, within thirty days thereafter, file with the administrator a written notice requesting a hearing. If such request is timely made, the letter of admonition shall be deemed vacated and a hearing shall be held. If, after such hearing, there is a finding that one or more of the grounds for discipline exist, any or all of the forms of discipline listed in this section may be imposed.

5-2-304. Records - annual reports - proof of financial responsibility.

(1) Every licensee shall maintain records in conformity with this code, rules adopted thereunder, and generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the licensee is complying with the provisions of this code. The record-keeping system of a licensee shall be sufficient if the licensee makes the required information reasonably available. The records need not be kept in the place of business where supervised loans are made if the administrator is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than four years after making the final entry relating to the loan, but, in the case of a revolving loan account, the four years is measured from the date of each entry.

(2) On or before June 1 of each year, every licensee shall file with the administrator an annual report in the form prescribed by the administrator relating to all supervised loans made by the licensee, which report shall also demonstrate satisfactory proof of the licensee's financial responsibility. At all other times, the licensee shall maintain satisfactory proof of financial responsibility. The administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form. The administrator may, by rule, determine the types and amounts of financial responsibility deemed to be satisfactory.

(3) If a licensee fails to file the annual report or proof of financial responsibility by July 1, the administrator may impose a penalty of five dollars per day from July 2 to the date the filing is postmarked. However, if a licensee fails to file and pay the appropriate penalty by July 15, or, at all other times, fails to provide satisfactory proof of financial responsibility within thirty days after receiving notice from the administrator, its license shall automatically expire.

5-2-305. Examinations and investigations.

(1) The administrator shall examine periodically, at intervals the administrator deems appropriate, the loans, business, and records of every licensee. In addition, for the purpose of discovering violations of this code or securing information lawfully required,

the administrator or, in lieu thereof, the official or agency to whose supervision the organization is subject pursuant to section 5-6-105, may at any time investigate the loans, business, and records of any supervised lender or any supervised financial organization. For these purposes the administrator shall have free and reasonable access to the offices, places of business, and records of the lender.

(2) (a) If the lender's records are located outside this state, the lender shall, at the lender's option, either make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained; except that the lender shall make the records available for examination at the administrator's office or at any other location the administrator deems appropriate, at the cost of the lender, if the administrator determines that the examination of the records at the location where the records are maintained endangers the safety of the administrator's representative or that there are not adequate facilities at the location where the records are maintained to conduct the examination. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

(b) The administrator may require any lender whose records are located within the state to make its records available for examination at the administrator's office or at any other location the administrator deems appropriate at the cost of the lender if the administrator determines that the examination of the records at the location where the records are maintained endangers the safety of the administrator's representative or that there are not adequate facilities at the location where the records are maintained to conduct the examination.

(3) For the purposes of this section, the administrator may administer oaths or affirmations, and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony, the administrator may apply to the district court in the city and county of Denver for an order compelling compliance.

(5) After the administrator has examined a licensee pursuant to this section, the administrator shall provide a report of the examination to the licensee and request the licensee to take the corrective action required therein. The licensee shall, within a time and manner as fixed by the administrator, take the corrective action required in the report and provide proof that the corrective action was taken. The corrective action required may include refunds of excess charges and corrections of disclosures required by this code. This subsection (5) does not require the administrator to allow a licensee to take

corrective action prior to the administrator filing legal or administrative action for repeated or willful violations of this code.

5-2-306. Administrative procedures - applicability.

Except as otherwise provided, the provisions of sections 24-4-102 to 24-4-106, C.R.S., apply to and govern all rules promulgated and all administrative action taken by the administrator pursuant to this code; except that section 24-4-104 (3), C.R.S., shall not apply to any such action.

5-2-307. Judicial review.

Any person aggrieved by any final action or order of the administrator and affected thereby is entitled to a review thereof by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

5-2-308. Regular schedule of payments - maximum loan term.

(1) Supervised loans not made pursuant to a revolving credit account and in which the principal is three thousand dollars or less shall be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor and:

(a) Over a period of not more than thirty-seven months if the principal is more than one thousand dollars; or

(b) Over a period of not more than twenty-five months if the principal is one thousand dollars or less.

5-2-309. Conduct of business other than making loans.

A supervised lender may not carry on any other business for the purpose of evasion or violation of this code nor may the supervised lender extend credit on the condition or requirement that the consumer obtain additional credit, goods, or services from the supervised lender or a person related to the supervised lender unless otherwise permitted by law.

5-2-310. Application of other provisions.

Except as otherwise provided, all provisions of this code applying to consumer loans apply to supervised loans.

PART 4

(Reserved)

PART 5

OTHER CREDIT TRANSACTIONS

5-2-501. Transactions subject to code by agreement of parties.

The parties to a transaction other than a consumer credit transaction may agree in a writing signed by the parties that the transaction is subject to the provisions of this code. If the parties so agree, the transaction is a consumer credit transaction for the purposes of this code.

5-2-502. Finance charge for other transactions.

With respect to a transaction that is specifically exempt from the rate ceilings of this code by the provisions of section 5-1-301 (15) (c), the parties may contract for the payment by the consumer of any finance charge up to a rate not to exceed an annual percentage rate of forty-five percent pursuant to section 18-15-104, C.R.S. The rate of the finance charge shall be calculated on the unpaid balances of the debt on the assumption that the debt will be paid according to its terms and will not be paid before the end of the agreed term.

ARTICLE 3
REGULATION OF AGREEMENTS AND PRACTICES

PART 1
DISCLOSURES, NOTICES, RECORDS, AND ADVERTISING

5-3-101. Applicability - information required.

(1) For purposes of this section, a consumer credit transaction includes a transaction secured primarily by an interest in land without regard to the rate of the finance charge if the consumer credit transaction is otherwise a consumer credit transaction.

(2) The creditor shall disclose to the consumer to whom credit is extended with respect to a consumer credit transaction the information, disclosures, and notices required by the federal "Truth in Lending Act", the federal "Consumer Leasing Act", and any regulation thereunder.

(3) The information, disclosures, and notices required by subsection (2) of this section must be provided if the transaction is a consumer credit transaction under this code even though the transaction is one of a class of credit transactions exempted from the federal "Truth in Lending Act", the federal "Consumer Leasing Act", and any regulation thereunder.

5-3-102. Notice of assignment.

The consumer is authorized to pay the original creditor until the consumer receives notification of assignment of rights to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification that does not reasonably identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless the assignee does so the consumer may pay the original creditor.

5-3-103. Change in terms of revolving credit accounts.

(1) If a creditor makes a change in the terms of a revolving account without complying with this section, any additional cost or charge to the consumer resulting from the change is an excess charge and subject to the remedies available to consumers described in section 5-5-202 and to the administrator described in section 5-6-114.

(2) (a) Except as otherwise provided in paragraph (b) or (c) of this subsection (2), whenever any term of a revolving credit account is changed or the required minimum periodic payment thereon is increased, the creditor shall mail or deliver written notice of the change, at least one billing cycle before the effective date of the change, to each consumer who may be affected by the change.

(b) The notice required by paragraph (a) of this subsection (2) shall be given in advance, but need not be given one billing cycle in advance, if the change has been agreed to by the consumer or if the change is an increase in a finance charge, periodic rate, or other charge permitted under section 5-2-202 as a result of the consumer's delinquency or default.

(c) The notice otherwise required by paragraph (a) of this subsection (2) is not required if the change:

(I) Results from the consumer's delinquency or default but is not of a kind listed in paragraph (b) of this subsection (2);

(II) Results from an agreement related to a court proceeding or arbitration;

(III) Is a reduction of any charge or component thereof; or

(IV) Is a suspension of future credit privileges or termination of a consumer credit transaction.

(3) The notice provisions of subsection (2) of this section shall not apply if:

(a) The consumer, after receiving notice in writing of the specific change, agrees in writing to the change;

(b) The consumer elects to pay an amount designated on a billing statement as including a new charge for a benefit offered to the consumer when the benefit and charge constitutes the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) The change involves no significant cost to the consumer; or

(d) The agreement provides limitations on changing of terms that are more restrictive than the requirements of subsection (2) of this section.

(4) The notice provided for in this section is given to the consumer when mailed to the consumer at the address used by the creditor for sending periodic billing statements.

5-3-104. Receipts - statements of account - evidence of payment.

(1) The creditor shall deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. A periodic statement showing a payment received by the creditor complies with this subsection (1).

(2) Upon written request of a consumer, the creditor of a consumer credit transaction, other than one pursuant to a revolving credit account, shall provide a written statement of the dates and amounts of payments made within the twelve months preceding the month in which the request is received and the total amount unpaid as of the end of the period covered by the statement. The statement shall be provided without charge twice during each year of the term of the obligation. If additional statements are requested, the creditor may charge not more than ten dollars for each additional statement.

(3) Within thirty days after a consumer has fulfilled all obligations with respect to a consumer credit transaction, other than one pursuant to a revolving credit account, the creditor shall deliver or mail to the consumer written evidence acknowledging payment in

full of all obligations with respect to the transaction and written evidence of release of any security interest and termination of any financing statement held, retained, or acquired.

5-3-105. Notice to cosigners and similar parties.

(1) No natural person, other than the spouse of the consumer, shall be obligated as a cosigner, comaker, guarantor, endorser, surety, or similar party with respect to a consumer credit transaction, unless before or contemporaneously with signing any agreement of obligation or any writing setting forth the terms of the consumer's agreement, the person receives a written notice that contains a completed identification of the debt he or she may have to pay and reasonably informs such person of his or her obligation with respect to it. Such written notice may be set forth in the consumer's agreement of obligation or in a separate writing. For purposes of this section, the word "cosigner", "comaker", "guarantor", "endorser", or "surety" means a natural person who, by agreement and without compensation, renders himself or herself liable for the obligation of another in a consumer credit transaction, and the terms "agreement" and "consumer's agreement" mean the original underlying agreement.

(2) The notice required by this section must be clear and conspicuous notice and comply with the disclosure requirements of 16 CFR 444.3, 12 CFR 227.14, or 12 CFR 535.3.

(3) The notice required by this section need not be given to a seller, lessor, or lender who is obligated to an assignee of his or her rights.

(4) A person entitled to notice pursuant to this section shall also be given a copy of any writing setting forth the terms of the consumer's agreement and of any separate agreement of obligation signed by the person entitled to the notice.

(5) A cosignor is entitled to a notice of right to cure pursuant to sections 5-5-110 (4) and 5-5-111 (3).

5-3-106. Disclosures for real estate secured consumer credit transactions.

(1) With respect to a real estate secured consumer credit transaction payable in installments, other than one pursuant to a revolving credit account, if the creditor credits payments made after the due date as of the date of receipt rather than the date payment was due, the creditor must clearly and conspicuously disclose to the consumer at or before the time that credit is extended the effect of untimely payments using language in substantially the following form:

"The dollar amount of the finance charge disclosed to you for this credit transaction is based upon your payments being received by the creditor on the date payments are due. If your payments are received after the due date, even if received before the date a late fee applies, you may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of principal. This is due to the accrual of daily interest until a payment is received."

(2) A creditor that makes or arranges for extensions of consumer loans secured by a dwelling and that uses credit scores for that purpose shall, upon request of the consumer, provide to the consumer to whom the credit report relates, as soon as practicable and reasonable, but in a period not to exceed thirty days, a copy of the information specifically required to be disclosed pursuant to section 12-14.3-104.3 (1), C.R.S., in such form as obtained from a consumer reporting agency as defined in section 12-14.3-102 (4), C.R.S. The creditor may charge a reasonable fee for making such information available to the consumer and such charge shall be an additional charge within the meaning of section 5-2-202 and not part of the finance charge.

(3) (a) Nothing in subsection (2) of this section shall require the creditor to:

(I) Explain to the consumer the information specifically required to be disclosed pursuant to section 12-14.3-104.3 (1), C.R.S.;

(II) Disclose any information other than the information required pursuant to subsection (2) of this section;

(III) Disclose any credit score or related information obtained by the creditor after the transaction occurs; or

(IV) Provide more than one disclosure to any one consumer per credit transaction.

(b) The creditor's obligation pursuant to subsection (2) of this section and this subsection (3) shall be limited to providing a copy of the information that was received from a consumer reporting agency, as defined in section 12-14.3-102 (4), C.R.S. A creditor who uses a credit score has no liability under this subsection (3) or subsection (2) of this section for the content of the credit score information received from a consumer reporting agency or from the omission of any information within the report provided by the consumer reporting agency.

5-3-107. Disclosures for consumer credit sale secured by a motor vehicle.

If the property that secures a consumer credit sale includes a motor vehicle and the written agreement does not provide for automobile liability insurance, the following clause shall be in the written agreement in capital letters and bold-face type: **"THIS CONTRACT DOES NOT PROVIDE FOR AUTOMOBILE LIABILITY INSURANCE, AND SAID BUYER ALSO STATES THAT HE OR SHE HAS/DOES NOT HAVE** (strike words not applicable) **IN EFFECT AN AUTOMOBILE LIABILITY POLICY AS DEFINED IN SECTION 42-7-103 (2), COLORADO REVISED STATUTES, ON THE MOTOR VEHICLE SOLD BY THIS CONTRACT."** (Effective August 5, 2009.)

5-3-108. Written agreement required.

No consumer credit transaction shall be valid or enforceable in this state unless its terms are contained in a written agreement and a copy is provided to the consumer at or before the time credit is extended. A creditor may provide the copy to the consumer in a form other than paper upon the consumer's written authorization.

5-3-109. Records.

Every creditor shall maintain records in conformity with this code, rules adopted thereunder, and generally accepted accounting principles and practices in a manner that will establish that the creditor is complying with the provisions of this code. The record-keeping system of a creditor shall be sufficient if the creditor makes the required information reasonably available. The records pertaining to any credit transaction need not be preserved for more than four years after making the final entry relating to the transaction, but, in the case of a revolving credit account, the four years is measured from the date of each entry.

5-3-110. Advertising.

(1) A creditor may not advertise, print, display, publish, distribute, broadcast, transmit or cause to be advertised, printed, displayed, published, distributed, broadcast, or transmitted in any manner any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of credit of a consumer credit transaction.

(2) This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(3) Advertising that complies with the federal "Truth in Lending Act" and the federal "Consumer Leasing Act" does not violate this section.

5-3-111. Use of credit scores.

Any provision in a contract that prohibits the disclosure of a credit score by a consumer reporting agency or a person who makes or arranges loans secured by a dwelling is void. For the purposes of this section, "dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence.

PART 2

LIMITATIONS ON AGREEMENTS AND PRACTICES

5-3-201. Security in sales or leases.

(1) With respect to a consumer credit sale, a creditor may take a security interest in the property sold. In addition, a creditor may take a security interest in goods upon which services are performed or to which goods sold are annexed, or in land to which the goods are affixed or that is maintained, repaired, or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is three thousand dollars or more, or in the case of a security interest in goods the debt secured is one thousand dollars or more. Except as provided with respect to cross-collateral described in section 5-3-202, a creditor may not otherwise take a security interest in property of the consumer to secure the debt arising from a consumer credit sale.

(2) With respect to a consumer lease, a creditor may not take a security interest in property of the consumer to secure the debt arising from the lease. This subsection (2) does not apply to a security deposit for a consumer lease.

(3) A security interest taken in violation of this section is void.

5-3-202. Cross-collateral.

(1) In addition to contracting for a security interest pursuant to the provisions on security in sales or leases contained in section 5-3-201, a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

(2) If the seller contracts for a security interest in other property pursuant to this section, the rate of finance charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing contained in section 5-2-205 (1). The seller has a reasonable time after so contracting to make any adjustments required by this section. "Seller" in this section does not include an assignee not related to the original seller.

5-3-203. Debt secured by cross-collateral.

(1) If debts arising from two or more consumer credit sales, other than sales pursuant to a revolving credit account, are secured by cross-collateral or consolidated into one debt payable on a single schedule of payments and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item are paid.

(2) Payments received by the seller upon a revolving credit account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(3) If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

5-3-204. Restrictions on interest in land as security.

(1) With respect to a consumer loan in which the amount financed is three thousand dollars or less, a lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

(2) For the purposes of this section, on revolving credit accounts, the amount financed shall be determined by the limit in the amount of credit made available to or for the account of the consumer if that limit is established by an express written agreement by the lender and if the lender does not retain the right to unilaterally reduce that credit limit, except in the event of default.

5-3-205. Use of multiple agreements.

A creditor may not use multiple agreements with respect to a single consumer credit transaction for the purpose of obtaining a higher finance charge than would otherwise be permitted by this code or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising. Dividing a single consumer credit transaction between a husband and wife shall be presumed to be a violation of this section. The excess amount of finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties contained in section 5-5-201 and the provisions on civil actions by the administrator contained in section 5-6-114.

5-3-206. No assignment of earnings.

(1) A creditor may not take an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer credit transaction. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the consumer.

(2) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him or her secured by an assignment of earnings.

5-3-207. Authorization to confess judgment prohibited.

A consumer may not authorize any person to confess judgment on a claim arising out of a consumer credit transaction. An authorization in violation of this section is void.

5-3-208. Balloon payments.

With respect to a consumer credit transaction other than one pursuant to a revolving credit account, if any scheduled payment is more than twice as large as the average of all other regularly scheduled payments, the consumer has the right to refinance the amount of that payment at the time it is due at the creditor's prevailing rates for such type of transaction if the consumer meets the creditor's normal credit standards and if the creditor is, at that time, in the business of making such transactions. The creditor shall disclose this right in writing to the consumer at the time the transaction is entered into. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the consumer. This section shall not apply to a transaction of a class defined by rule of the administrator promulgated in accordance with article 4 of title

24, C.R.S., as not requiring for the protection of the consumer his or her right to refinance as provided in this section.

5-3-209. Referral sales.

With respect to a consumer credit sale or consumer lease, the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the consumer as an inducement for a sale or lease in consideration of the consumer giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the consumer agrees to buy or lease. If a consumer is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the consumer, at his or her option, may rescind the agreement or retain the goods delivered and the benefit of any services performed without any obligation to pay for them.

5-3-210. Discrimination prohibited.

No consumer credit transaction regulated by this code shall be denied any person, nor shall terms and conditions be made more stringent, on the basis of discrimination, solely because of disability, race, creed, religion, color, sex, sexual orientation, marital status, national origin, or ancestry. This section shall not apply to any consumer credit transaction made or denied by a seller, lessor, or lender whose total original unpaid balances arising from consumer credit transactions for the previous calendar year are less than one million dollars.

PART 3

LIMITATIONS ON CONSUMERS' LIABILITIES

5-3-301. Restriction on liability in consumer lease.

The obligation of a lessee upon expiration of a consumer lease, may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.

5-3-302. Limitation on default charges.

Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit transaction may not provide for charges as a result of default by the consumer other than those authorized by this code. A provision in violation of this section is unenforceable.

5-3-303. Assignee subject to claims and defenses.

(1) With respect to a consumer credit sale or consumer lease, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer against the seller or lessor arising from the sale or lease of goods or services, notwithstanding that the assignee is a holder in due course of a negotiable instrument issued in connection with the consumer credit sale or consumer lease.

(2) A claim or defense of a consumer specified in subsection (1) of this section may be asserted against the assignee under this section only to the extent of the amount owing to the assignee with respect to the sale or lease of the goods or services as to which the claim or defense arose at the time the assignee has written notice of the claim or defense.

(3) For the purpose of determining the amount owing to the assignee with respect to the sale or lease:

(a) Payments received by the assignee after the consolidation of two or more consumer credit sales, except pursuant to a revolving credit account, are deemed to have been first applied to the payment of the sales first made; if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smallest sale; and

(b) Payments received upon a revolving credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(4) An agreement may not limit or waive the claims or defenses of a consumer under this section.

5-3-304. Use of account - constructive assent to terms.

The use of a revolving credit account by a consumer, or by any person authorized by the consumer, constitutes the consumer's acceptance of the creditor's offer of credit and creates a binding contract on the creditor's terms then in effect. Such terms may be modified in the future as agreed by the parties and subject to the requirements of this article, including, but not limited to, the notice requirements of section 5-3-103.

5-3-305. Advance payment to reserve lodging and motor vehicle rental services - notice to consumer required.

If a deposit, reservation fee, or other advance payment is to be charged to a revolving credit account for lodging or motor vehicle rental services to be provided in the future in this state, the seller shall not charge such advance payment to the consumer's account without first notifying the consumer, either orally or in writing, and giving the consumer the opportunity to reject the services.

PART 4

HOME SOLICITATION SALES

5-3-401. Definitions - "home solicitation sale".

"Home solicitation sale" means a consumer credit sale of goods or services in which the seller or a person acting for the seller personally solicits the sale and the buyer's agreement or offer to purchase is given to the seller or a person acting for the seller at a residence. It does not include a sale made pursuant to a preexisting revolving credit account, a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, a transaction conducted and consummated entirely by mail or telephone, or a sale that is

subject to the provisions of the federal "Truth in Lending Act" on the consumer's right to rescind certain transactions.

5-3-402. Buyer's right to cancel.

(1) Except as provided in subsection (5) of this section, in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase that complies with this part 4.

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(3) Notice of cancellation, if given by mail, is given when it is deposited in a mail box properly addressed and postage prepaid.

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) The buyer may not cancel a home solicitation sale if, by separate dated and signed statement that is not as to its material provisions a printed form and describes an emergency requiring immediate remedy, the buyer requests the seller to provide goods or services without delay in order to safeguard the health, safety, or welfare of natural persons or to prevent damage to property the buyer owns or for which the buyer is responsible, and:

(a) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation; and

(b) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

5-3-403. Form of agreement or offer - statement of buyer's rights.

(1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer, and obtain his signature to, a written agreement or offer to purchase that designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights that complies with subsection (2) of this section. A copy of any writing required by this subsection (1) to be signed by the buyer, completed at least as to the date of the transaction and the name and mailing address of the seller, shall be given to the buyer at the time the buyer signs the writing.

(2) The statement shall comply with any notice of cancellation or a similar requirement of any trade regulation rule of the federal trade commission that by its terms applies to the home solicitation sale.

(3) Until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of the buyer's

intention to cancel; except that the buyer's right of cancellation shall expire three years after the date of the consummation of the home solicitation sale, notwithstanding the fact that the seller has not complied with this part 4.

5-3-404. Restoration of down payment.

(1) Within ten days after a notice of cancellation has been received by the seller or an offer to purchase has been otherwise revoked, the seller shall tender to the buyer any payments made by the buyer, any note or other evidence of indebtedness, and any goods traded in. A provision permitting the seller to keep all or any part of any goods traded in, payment, note, or other evidence of indebtedness is in violation of this section and unenforceable.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of goods delivered to the buyer by the seller and has a lien on the goods in the buyer's possession or control for any recovery to which the buyer is entitled.

5-3-405. Duty of buyer - no compensation for services prior to cancellation.

(1) Except as provided by the provisions on retention of goods by the buyer contained in section 5-3-404 (3) and allowing for ordinary wear and tear or consumption of the goods contemplated by the transaction, within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale, but the buyer is not obligated to tender at any place other than the buyer's residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, forty days is presumed to be a reasonable time.

(2) The buyer has a duty to take reasonable care of the goods in his or her possession before cancellation or revocation and for a reasonable time thereafter during which time the goods are otherwise at the seller's risk.

(3) If a home solicitation sale is canceled, the seller is not entitled to compensation for any services the seller performed pursuant to it.

PART 5

CONSUMER INSURANCE PREMIUM FINANCING

5-3-501. Scope.

The provisions of this part 5 apply to consumer insurance premium loans.

5-3-502. Form of insurance premium loan agreement.

An agreement pursuant to which a consumer insurance premium loan is made shall contain the names of the insurance agent or broker negotiating each policy or contract and of the insurer issuing each policy or contract, the number and inception date of and premium for each policy or contract, the date on which the term of the loan begins, and a clear and conspicuous notice that each policy or contract may be canceled if payment is not made in accordance with the agreement. If a policy or contract has not been issued by the time the agreement is signed, the agreement may provide that the insurance agent or broker may insert the appropriate information in the agreement and, if he or she does so, shall furnish the information promptly in writing to the insured.

5-3-503. Notice of cancellation.

If a default exists on a consumer insurance premium loan and any right to cure that exists has expired without cure being effected, the lender may give notice of cancellation of each insurance policy or contract to be canceled. If given, the notice of cancellation shall be in writing and given to the insurer who issued the policy or contract and to the insured. The insurer, within two business days after receipt of the notice of cancellation together with a copy of the insurance premium loan agreement if not previously given to the insurer, shall give any notice of cancellation required by the policy, contract, or law and, within ten business days after the effective date of the cancellation, pay to the lender any premium unearned on the policy or contract as of that effective date. Within ten business days after receipt of the unearned premium, the lender shall pay to the consumer indebted upon the insurance premium loan any excess of the unearned premium received over the amount owing by the consumer upon the insurance premium loan.

ARTICLE 3.1
DEFERRED DEPOSIT LOAN ACT

5-3.1-101. Short title.

This article shall be known and may be cited as the "Deferred Deposit Loan Act".

5-3.1-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Administrator" means the administrator of the "Uniform Consumer Credit Code".

(1.5) "Annual percentage rate" means an annual percentage rate as determined pursuant to section 107 of the federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq. All finance charges shall be included in the calculation of the annual percentage rate.

(2) "Consumer" means a person other than an organization who is the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

(2.5) "Default" means a consumer's failure to repay a deferred deposit loan in compliance with the terms contained in a deferred deposit loan agreement.

(3) "Deferred deposit loan" or "payday loan" means a consumer loan whereby the lender, for a fee, finance charge, or other consideration, does the following:

(a) Accepts a dated instrument from the consumer as sole security for the loan and no other collateral;

(b) Agrees to hold the instrument for a period of time prior to negotiation or deposit of the instrument; and

(c) Pays to the consumer, credits to the consumer's account, or pays to another person on the consumer's behalf the amount of the instrument, less finance charges permitted by section 5-3.1-105.

(4) "Instrument" means a personal check or authorization to transfer or withdraw funds from an account signed by the consumer and made payable to a person subject to this article.

(5) (a) "Lender" means any person who offers, or makes a deferred deposit loan, who arranges a deferred deposit loan for a third party, or who acts as an agent for a third party, regardless of whether the third party is exempt from licensing under this article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, through any method including mail, telephone, internet, or any electronic means.

(b) Lender includes, but is not limited to, a supervised financial organization as defined in section 5-1-301 (45).

(c) Notwithstanding that a bank, saving and loan association, credit union, or supervised lender may be exempted by federal law from this code's interest rate, finance charges, and licensure provisions, all other applicable provisions of this code apply to both a deferred deposit loan and a deferred deposit lender.

(6) "Loan amount" means the amount financed as defined in regulation z of the federal "Truth in Lending Act", 12 CFR 226.18 (b), as amended, or as supplemented by this code, articles 1 to 9 of this title.

5-3.1-103. Written agreement requirements.

Each deferred deposit loan transaction and renewal shall be documented by a written agreement signed by both the lender and consumer. The written agreement shall contain the name of the consumer; the transaction date; the amount of the instrument; the annual percentage rate charged; a statement of the total amount of finance charges charged, expressed both as a dollar amount and an annual percentage rate; and the name, address, and telephone number of any agent or arranger involved in the transaction. In addition, the written agreement shall include all disclosures required by section 5-3-101 (2). The written agreement shall set a date upon which the instrument may be deposited or negotiated. There shall be no maximum loan term or minimum finance charge. The minimum loan term shall be six months from the loan transaction date. The lender shall accept prepayment from a consumer prior to the loan due date and shall not charge the consumer a penalty if the consumer opts to prepay the loan. A lender may hold an instrument and delay completion of the transaction beyond the loan due date without any additional written agreement or new disclosure, but the lender may not charge any additional fees for holding the instrument or delaying the completion of the transaction.

5-3.1-104. Notice to consumers.

A lender shall provide the following notice in a prominent place on each loan agreement in at least ten-point type:

> A DEFERRED DEPOSIT LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS.
>
> A DEFERRED DEPOSIT LOAN SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS.
>
> RENEWING THE DEFERRED DEPOSIT LOAN RATHER THAN PAYING THE DEBT IN FULL WILL REQUIRE ADDITIONAL FINANCE CHARGES.

5-3.1-105. Authorized interest rate.

A lender may charge a finance charge for each deferred deposit loan or payday loan that may not exceed twenty percent of the first three hundred dollars loaned plus seven and one-half percent of any amount loaned in excess of three hundred dollars. Such charge shall be deemed fully earned as of the date of the transaction. The lender may also

charge an interest rate of forty-five percent per annum for each deferred deposit loan or payday loan. If the loan is prepaid prior to the maturity of the loan term, the lender shall refund to the consumer a prorated portion of the annual percentage rate based upon the ratio of time left before maturity to the loan term. In addition, the lender may charge a monthly maintenance fee for each outstanding deferred deposit loan, not to exceed seven dollars and fifty cents per one hundred dollars loaned, up to thirty dollars per month. The monthly maintenance fee may be charged for each month the loan is outstanding thirty days after the date of the original loan transaction. The lender shall charge only those charges authorized in this article in connection with a deferred deposit loan.

5-3.1-106. Maximum loan amount - right to rescind.

(1) A lender shall not lend an amount greater than five hundred dollars nor shall the amount financed exceed five hundred dollars by any one lender at any time to a consumer. Nothing in this subsection (1) shall preclude a lender from making more than one loan to a consumer so long as the total amount financed does not exceed five hundred dollars at any one time and there is at least a thirty-day waiting period between loans.

(2) A consumer shall have the right to rescind the deferred deposit loan on or before 5 p.m. the next business day following the loan transaction.

5-3.1-107. Multiple outstanding transactions notice.

A lender shall provide the following notice in a prominent place on each deferred deposit loan agreement in at least ten-point type:

> STATE LAW PROHIBITS DEFERRED DEPOSIT LOANS EXCEEDING FIVE HUNDRED DOLLARS ($500) TOTAL DEBT PLUS APPLICABLE FINANCE CHARGES PERMITTED BY LAW FROM A DEFERRED DEPOSIT LENDER. EXCEEDING THIS AMOUNT MAY CREATE FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY. YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY 5 P.M. THE NEXT BUSINESS DAY FOLLOWING THIS TRANSACTION.

5-3.1-108. Renewal - new loan - consecutive loans - payment plan - definitions.

(1) A deferred deposit loan shall not be renewed more than once. After such renewal, the consumer shall pay the debt in cash or its equivalent. If the consumer does not pay the debt, then the lender may deposit the consumer's instrument.

(2) Upon renewal of a deferred deposit loan, the lender may assess an additional finance charge not to exceed an annual percentage rate of forty-five percent. If the deferred deposit loan is renewed prior to the maturity date, the lender shall refund to the consumer a prorated portion of the finance charge based upon the ratio of time left before maturity to the loan term.

(3) A transaction is completed when the lender presents the instrument for payment or the consumer redeems the instrument by paying the full amount of the instrument to the holder. Once the consumer has completed the deferred deposit transaction, the consumer may enter into a new deferred deposit agreement with the lender. If the

consumer's instrument is dishonored by the payor financial institution after the transaction is complete and, before the lender receives a notice of dishonor, the lender makes a new loan that does not exceed the maximum allowable loan, the lender shall not be in violation of the maximum loan amount provisions in section 5-3.1-106.

(4) Nothing in this section prohibits a lender from refinancing a deferred deposit loan as a supervised loan subject to the provision of this code, articles 1 to 9 of this title; except that the lender may not contract for or receive the minimum finance charge contained in section 5-2-201 (7).

(5) (Deleted by amendment, L. 2010, (HB 10-1351), ch. 267, p. 1223, 6, effective August 11, 2010.)

5-3.1-109. Form of loan proceeds.

A lender may pay the proceeds from a deferred deposit loan to the consumer in the form of a business instrument, money order, cash, stored value card, internet transfer, or authorized automated clearinghouse transaction. The consumer shall not be charged an additional finance charge or fee for cashing the lender's business instrument or for negotiating forms of loan proceeds other than cash.

5-3.1-110. Endorsement of instrument.

A lender shall not negotiate or present an instrument for payment unless the instrument is endorsed with the actual business name of the lender.

5-3.1-111. Redemption of instrument.

Prior to the lender negotiating or presenting the instrument, the consumer shall have the right to redeem any instrument held by a lender as a result of a deferred deposit loan if the consumer pays the full amount of the instrument to the lender.

5-3.1-112. Authorized dishonored instrument charge.

If an instrument held by a lender as a result of a deferred deposit loan is returned unpaid to the lender from a payor financial institution due to insufficient funds, a closed account, a stop-payment order, or any other reason, not including a bank error, the lender shall have the right to exercise all civil means authorized by law to collect the face value of the instrument; except that the provisions and remedies of section 13-21-109, C.R.S., are not applicable to any deferred deposit loan. In addition, the lender may contract for and collect one returned instrument charge for each deferred deposit loan, not to exceed twenty-five dollars, plus court costs and reasonable attorney fees as awarded by a court and incurred as a result of the default. However, such attorney fees shall not exceed the loan amount. The lender shall not collect any other fees as a result of default. A returned instrument charge shall not be allowed if the loan proceeds instrument is dishonored by the financial institution or the consumer places a stop-payment order due to forgery or theft.

5-3.1-113. Posting of charges.

Any lender offering a deferred deposit loan shall post at any place of business where deferred deposit loans are made a notice of the finance charges imposed for such deferred deposit loans.

5-3.1-114. Notice on assignment or sale of instruments.

Prior to sale or assignment of instruments held by the lender as a result of a deferred deposit loan, the lender shall place a notice on the instrument in at least ten-point type to read:

THIS IS A DEFERRED DEPOSIT LOAN INSTRUMENT.

5-3.1-115. Records and annual reports.

A lender shall maintain records and file an annual report in accordance with section 5-2-304.

5-3.1-116. License requirement.

In accordance with section 5-2-301, no person shall engage in the business of deferred deposit loans without having first obtained a supervised lender's license pursuant to section 5-2-302. A separate license shall be required for each location where such business is conducted.

5-3.1-117. Examination and investigation.

A lender may be examined and investigated in accordance with section 5-2-305.

5-3.1-118. Denial of license - discipline.

(1) The administrator may deny a license or discipline a lender in accordance with sections 5-2-302, 5-2-303, and 5-2-306.

(2) (a) If the administrator finds that a lender has violated the code, articles 1 to 9 of this title, the administrator shall notify the lender in writing of such violations and the actions the lender must take to cure the violations. The administrator shall allow the lender thirty days after the postmark date of the notice, or the date of delivery if not mailed, to cure the violations before taking disciplinary action in accordance with subsection (1) of this section. If the administrator determines that such lender has performed such actions contained in such notice, the lender shall not be liable for the violations that have been cured.

(b) This subsection (2) shall not apply if the lender violated the code, articles 1 to 9 of this title, in a repeated or willful manner.

(c) If an alleged violation of the code, articles 1 to 9 of this title, is the result of a bona fide clerical oversight or computer-based error and not the product of the lender's established lending practices, and the alleged violation can be corrected without material change to the terms and conditions of a consumer's loan, the lender shall have thirty days after the postmark date of the notice, or the date of delivery if not mailed, to cure the alleged violation without incurring any fine or penalty or any required refund of any finance charges associated with the alleged violation. Nothing in this subsection (2) shall

exempt a lender from making required refunds if the violation resulted in an overcharge or excess charge to the consumer.

(3) A lender shall have ninety days to comply with any rule, interpretation, or opinion of the administrator that requires a lender to implement new policies or procedures that involve the reprinting of the lender's forms to include new disclosures, or that requires the lender to revise existing computer programs or add new computer programs to comply with the rule, interpretation, or opinion. During the ninety-day period, the administrator shall not deem the lender to be in violation of articles 1 to 9 of this title for noncompliance with the new rule, interpretation, or opinion.

5-3.1-119. Applicability of other provisions of this title.

The provisions of the code, articles 1 to 9 of this title, apply to a lender unless such provisions are inconsistent with this article.

5-3.1-120. Criminal culpability.

A consumer shall not be subject to any criminal penalty for entering into a deferred deposit loan agreement. A consumer shall not be subject to any criminal penalty in the event the instrument is dishonored, unless the consumer's account on which the instrument was written was closed before the agreed upon date of negotiation, subject to the provisions of section 18-5-205, C.R.S.

5-3.1-121. Unfair or deceptive practices.

(1) No person shall engage in unfair or deceptive acts, practices, or advertising in connection with a deferred deposit loan.

(2) A person violates the requirements of this article by engaging in any act that limits or restricts the application of this article, including making loans disguised as personal property, personal sales, and leaseback transactions or by disguising loan proceeds as cash rebates for the pretextual installment sale of goods and services.

5-3.1-122. Unconscionability.

(1) In applying the provisions of sections 5-5-109 and 5-6-112 to the actions of a lender, consideration shall be given to the following, among other factors:

(a) The financial benefits of the loan to the consumer and the level of risk incurred by the lender in extending credit;

(b) The absence of collateral other than the instrument executed by the consumer payable to the lender;

(c) The relation between the amount and terms of credit granted and the cost of making the loan.

(2) A lender shall require a consumer to fill out a loan application at least once in each twelve-month period of time and shall maintain this application on file. The application shall be signed and dated by the consumer.

(3) (a) A lender shall require the consumer to provide a pay stub or other evidence of income at least once each twelve-month period. Such evidence shall not be over forty-five days old when presented. If a lender requires a consumer to present a bank statement to secure a loan, the lender shall allow the consumer to delete from the statement the information regarding to whom the debits listed on the statement were payable.

(b) If the amount borrowed is not more than twenty-five percent of the consumer's monthly gross income and benefits, as evidenced by a paycheck stub or otherwise substantiated, a lender shall not be obligated to investigate the consumer's continued debt position, and the consumer's ability to repay the loan need not be further demonstrated.

(4) If a lender complies with the requirements of subsections (2) and (3) of this section, and the deferred deposit loan otherwise complies with this article and other applicable law, neither the consumer's inability to repay the loan nor the lender's decision to obtain or not obtain additional information concerning the consumer's creditworthiness shall be cause to determine that a loan is unconscionable.

5-3.1-123. Use of multiple agreements for deferred deposit loans.

If a consumer obtains a deferred deposit loan voluntarily and separately from his or her spouse and the consumer's action is documented in writing, signed by the consumer, and retained by the lender, the transaction shall not be considered a violation of section 5-3-205.

ARTICLE 3.5
CONSUMER EQUITY PROTECTION

PART 1
OBLIGOR PROTECTION

5-3.5-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Bridge loan" means temporary or short-term financing with a maturity of less than eighteen months that requires payments of only interest until the entire unpaid balance is due and payable.

(2) "Covered loan" means a consumer credit transaction secured by property located within this state that is considered a mortgage under section 152 of the federal "Home Ownership and Equity Protection Act of 1994", 15 U.S.C. sec. 1602 (aa), as amended, and regulations adopted pursuant thereto by the federal reserve board, including, without limitation, 12 CFR 226.32, as amended; except that, if the total points and fees paid by the obligor at or before closing exceed six percent of the total loan amount, such loan shall be deemed to be a covered loan if the transaction otherwise meets the requirements of this subsection (2).

(3) "Lender" means any individual or entity that originates one or more covered loans. The individual or entity to whom a covered loan is initially payable, either on the face of the note or contract or by agreement when there is no note or contract, shall be deemed to be the lender.

(4) "Mortgage broker" means a person other than an employee or exclusive agent of a lender who, for compensation, brings an obligor and lender together to obtain a covered loan.

(5) "Obligor" means each obligor, co-obligor, co-signer, or grantor obligated to repay a covered loan.

(6) "Political subdivision" means a county, city and county, city, town, service authority, school district, local improvement district, law enforcement authority, city or county housing authority, or water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

(7) "Principal balance" means the amount financed plus prepaid finance charges as defined in the federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et. seq., as amended.

(8) "Servicer" has the same meaning as set forth in section 2605 (i) (2) of the federal "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 et. seq., as amended.

5-3.5-102. Protection of obligors.

(1) A covered loan is subject to the following limitations:

(a) **Limitation on balloon payment.** No covered loan may contain a provision for a scheduled payment that is more than twice as large as the average of earlier regularly scheduled payments, unless such balloon payment becomes due and payable not less than one hundred twenty months after the date of execution of the loan. This prohibition does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the obligor or if the purpose of the loan is a bridge loan connected with, or related to, the acquisition or construction of a dwelling intended to become the obligor's principal dwelling.

(b) **No call provision.** No covered loan may contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition shall not apply when:

(I) Acceleration of repayment of the loan is justified:

(A) By default in which the obligor fails to meet the repayment terms of the agreement for any outstanding balance; or

(B) Pursuant to a due-on-sale provision;

(II) There is fraud or material misrepresentation by an obligor in connection with the loan;

(III) There is a provision permitting acceleration if the lender, in good faith, believes itself to be materially insecure or believes that the prospect of future payment has become materially impaired; or

(IV) There is any action or inaction by the obligor that adversely affects the lender's security for the loan or any rights of the lender in such security.

(c) **No negative amortization.** No covered loan may contract for a payment schedule with regular periodic payments that cause the principal balance to increase; except that this paragraph (c) shall not prohibit negative amortization as a consequence of a temporary forbearance or restructure sought by the obligor.

(d) **No increased interest rate upon default.** No covered loan may contract for any increase in the interest rate as a result of a default; except that this paragraph (d) shall not apply to periodic interest rate changes in a variable rate loan that is otherwise consistent with the provisions of the loan agreement if the change in the interest rate is not occasioned by the event of default or a permissible acceleration of the indebtedness.

(e) **Limitations on mandatory arbitration clauses.** No covered loan may be subject to a mandatory arbitration clause that:

(I) Does not comply with rules set forth by a nationally recognized arbitration organization such as the American arbitration association;

(II) Does not require the arbitration proceeding to be conducted:

(A) Within the federal judicial district in which the subject property is located;

(B) In the city nearest the obligor's residence where a federal district court is located; or

(C) At such other location as may be mutually agreed upon by the parties;

(III) Does not require the lender to contribute at least fifty percent of the amount of any filing fee; and

(IV) Does not require the lender to pay standard daily arbitration fees, both its own and those of the obligor, for at least the first day of arbitration.

(f) **No advance payments.** No covered loan may include terms under which any periodic payments required under the loan are paid in advance from the loan proceeds provided to the obligor.

(g) **Limitations on prepayment fees.** (I) **First thirty-six months only.** A prepayment fee or penalty shall be permitted only on a refinance to a different lender other than pursuant to a sale and only during the first thirty-six months after the date of execution of a covered loan. Prepayment fees and penalties shall not exceed six months' interest for prepayment within the first three years of the loan. The prepayment fees or penalties permitted by this paragraph (g) shall apply only to covered loans that are secured by a first mortgage, deed of trust, or security interest to refinance, by amendment, payoff, or otherwise, an existing loan made to finance the acquisition or construction of a dwelling, including a refinance loan providing additional sums of money for any purpose, regardless of whether related to acquisition or construction. No prepayment fees or penalties shall be included in the loan documents or charged to the obligor for prepayment:

(A) After the third year of the loan;

(B) Pursuant to a refinance with the same lender; or

(C) That is partial.

(II) **No prepayment fees for certain refinancing.** No prepayment fee or penalty may be charged on a refinancing of a covered loan if the covered loan being refinanced is owned by the refinancing lender at the time of such refinancing.

(III) **Lender must offer choice.** A lender shall not include a prepayment penalty fee in a covered loan unless the lender offers the obligor the option of choosing a loan product without a prepayment penalty fee. A lender shall be deemed to have complied

with this requirement if the obligor receives and executes the following disclosure, which may be incorporated with any other required disclosure:

"LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product _____ with / _____ without a prepayment penalty."

5-3.5-103. Restricted acts and practices.

(1) The following acts and practices are prohibited in the making of a covered loan:

(a) **No lending without cautionary notice.** (I) A lender may not make a covered loan unless the lender or a mortgage broker has given the following notice, or a substantially similar notice, in writing to the obligor within a reasonable period of time after determining that the loan would result in a covered loan, but no later than the time by which the notice is required under the notice provision contained in 12 CFR 226.31 (c), as amended:

"CONSUMER CAUTION

If you obtain this loan, the lender will have a mortgage in Colorado; this is a deed of trust on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan. Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. The loan rate and fees could vary based on which lender or broker you select.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then later incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors."

(II) It shall be a rebuttable presumption that a lender or broker has met its obligation to provide this disclosure if the consumer provides the lender or broker with a signed

acknowledgment of receipt of a copy of the notice set forth in subparagraph (I) of this paragraph (a).

(b) **No lending without due regard to repayment ability.** (I) A lender may not make a covered loan to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment.

(II) There is a presumption that a creditor has violated this paragraph (b) if the creditor engages in a pattern or practice of making loans subject to 12 CFR 226.32 without verifying and documenting consumers' repayment abilities.

(III) (A) In the case of a stated income loan, the reasonable basis for believing that there are sufficient funds to support the covered loan may not be based solely on the income stated by the obligor, but may include other information in the possession of the lender after the solicitation of all information that the lender customarily solicits in connection with stated income loans. A lender shall not knowingly or willfully originate a covered loan as a stated income loan with the intent of evading this subparagraph (III).

(B) A person who willfully and knowingly gives false or inaccurate information or fails to provide information that the person is required to disclose pursuant to applicable law may have violated and may be subject to penalties established in 15 U.S.C. sec. 1611.

(c) **Refinancing within a one-year period.** Within one year after having extended credit subject to this article, no lender shall refinance any covered loan to the same obligor into another covered loan unless the refinancing is in the obligor's interest. An assignee holding or servicing an extension of mortgage credit subject to this article shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any covered loan to the same obligor into another covered loan unless the refinancing is in the obligor's interest. A creditor or assignee shall not engage in acts or practices to evade this paragraph (c), including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement, regardless of whether the existing loan is satisfied and replaced by the new loan, and charging a fee.

(d) **No refinancing certain low-rate loans.** A lender shall not replace or consolidate a zero interest rate, or other low-rate, loan made by a governmental or nonprofit lender with a covered loan within the first ten years after the low-rate loan was made unless the current holder of the loan consents in writing to the refinancing. For purposes of this paragraph (d), a "low-rate" loan is a loan that carries a current interest rate two percentage points or more below the current yield on United States department of the treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, then the fully-indexed rate or the fully stepped-up rate, as appropriate, should be used in lieu of the current rate to determine whether a loan is a low-rate loan.

(e) **Restrictions on covered loan proceeds to pay home improvement contracts.** A lender shall not pay a contractor under a home-improvement contract from the proceeds of a covered loan other than by an instrument payable to the obligor or jointly to the obligor and the contractor or, at the election of the obligor, through a third-party escrow agent in accordance with terms established in a written agreement signed by the obligor, the lender, and the contractor prior to the disbursement of funds to the contractor.

(f) **No financing of credit insurance.** No covered loan may include, directly or indirectly, financing of any premiums for any credit life, credit disability, credit property, or credit unemployment insurance, any other life or health insurance products, or any payments for any debt cancellation or suspension agreement or contracts; except that calculated insurance premiums or debt cancellation or suspension fees paid on a monthly basis shall not be considered to have been financed by the lender for purposes of this paragraph (f).

(g) **No recommending default.** No lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a covered loan that refinances all or any portion of such existing loan or debt.

(h) **No fee for payoff quote.** No creditor may charge a fee for informing or transmitting to any person the balance due to pay off a covered loan or to provide a release upon prepayment. A creditor shall provide a payoff balance within a reasonable time after a request, but in any event not more than five business days after a written request.

5-3.5-104. Reporting to credit bureaus.

A lender or its servicer shall report at least quarterly both the favorable and unfavorable payment history information of the obligor on payments due to the lender on a covered loan to a nationally recognized consumer credit reporting agency. This section shall not prevent a lender or its servicer from agreeing with the obligor not to report specified payment history information in the event of a resolved or unresolved dispute with an obligor, and shall not apply to covered loans held or serviced by a lender for less than ninety days.

PART 2

ENFORCEMENT AND LIABILITY

5-3.5-201. Enforcement - liability.

The attorney general and any obligor of a covered loan may enforce this article with respect to such covered loan in the manner provided for violations of the federal "Home Ownership and Equity Protection Act of 1994", 15 U.S.C. sec. 1639, and regulations adopted pursuant thereto by the federal reserve board, including, without limitation, 12 CFR 226.32, as set forth in the federal "Truth in Lending Act", 15 U.S.C. sec. 1640, and regulations adopted pursuant thereto by the federal reserve board, including the provisions on civil liability, class actions, rescission, correction, and bona fide error. Persons engaged in the purchase, sale, assignment, securitization, or servicing of covered loans shall be liable under this article for the action or inaction of persons originating such loans only in the manner and to the extent provided for violation of the federal

"Home Ownership and Equity Protection Act of 1994" and the federal "Truth in Lending Act", 15 U.S.C. sec. 1641, and regulations adopted pursuant thereto by the federal reserve board.

PART 3

MISCELLANEOUS PROVISIONS

5-3.5-301. Effective date - applicability.

Section 5-3.5-303 is intended to restate and confirm the existing law of this state, namely that the laws of this state relating to the financial and lending activities are to be applied on a uniform, statewide basis. Parts 1 and 2 of this article shall take effect January 1, 2003. This part 3 shall take effect upon passage. This article shall apply to covered loans offered or entered into on or after January 1, 2003.

5-3.5-302. Severability.

The provisions of this article are severable and if any of its provisions are held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this article. It is hereby declared to be the legislative intent that this article would have been adopted if the unconstitutional provisions had not been included.

5-3.5-303. Relationship to other laws.

(1) **General rule.** All political subdivisions of this state, including municipalities, shall be prohibited from enacting and enforcing ordinances, resolutions, and regulations pertaining to lending activities.

(2) **Preemption.** Any provision of this article preempted by federal law with respect to a national bank or federal savings association shall also, to the same extent, not apply to an operating subsidiary of a national bank or federal savings association that satisfies the requirements for operating subsidiaries established in 12 CFR 5.34, relating to operating subsidiaries, or 12 CFR 559.3, relating to the characteristics of and requirements for subordinate organizations of federal savings associations, nor to a bank chartered under the laws of Colorado or any operating subsidiary of such a state chartered bank.

(3) **Interpretation.** The provisions of this article shall be interpreted and applied to the fullest extent practical in a manner consistent with applicable federal laws and regulations, and shall not be deemed to constitute an attempt to override federal law.

ARTICLE 3.7
CONSUMER CREDIT SOLICITATION PROTECTION

5-3.7-101. Consumer credit solicitation protection - definitions.

(1) A solicitor that makes a firm offer of credit for a lender credit card or a seller credit card to a consumer by mail solicitation and receives an acceptance of that offer that lists the address of the consumer accepting the offer as different from the address to which the offer was sent shall, prior to issuing or directing issuances of the lender credit card or seller credit card, verify that the consumer accepting the offer is the same consumer to whom the offer was sent.

(2) As used in this section, unless the context otherwise requires:

(a) "Firm offer of credit" shall have the same meaning as set forth in 15 U.S.C. sec. 1681a (l).

(b) "Solicitor" means the person making the offer by mail solicitation and does not include a card issuer or other creditor when that creditor or card issuer relies on an independent third party to provide the services.

(c) "Verify" means the use of commercially reasonable efforts to ascertain that the consumer responding to a mail solicitation is the same consumer to whom the solicitation was directed. For the purposes of this article, a solicitor shall be deemed to verify that the consumer accepting a mail solicitation is the same consumer to whom the solicitation was directed if:

(I) A consumer responding at a telephone number appearing in a publicly available directory or database as the telephone number of the consumer to whom the solicitation was mailed identifies himself or herself as the consumer to whom the solicitation was mailed and acknowledges the consumer's acceptance of the solicitation; or

(II) A consumer presents the solicitor, including presentation by facsimile transmission or mail, the original or a copy of one or more documents, including a driver's license, social security card, passport, or any other identification document issued by a state or federal governmental agency, that, on the face of the document or documents, appears to confirm such consumer's identity as the consumer to whom a solicitation was mailed and the consumer acknowledges acceptance of the solicitation; or

(III) The solicitor verified, by any means adopted in federal regulations, that the consumer accepting the solicitation is the consumer to whom the solicitation was directed; or

(IV) The solicitor verified by any other means, that under the standards and practices of the industry in which the solicitor is engaged would be deemed sufficient, that the consumer accepting the solicitation is the same consumer to whom the solicitation was sent.

ARTICLE 4
INSURANCE

PART 1
INSURANCE IN GENERAL

5-4-101. Short title.

This article shall be known and may be cited as "Uniform Consumer Credit Code - Insurance".

5-4-102. Scope - relation to credit insurance act - applicability to parties.

(1) This article applies to insurance provided or to be provided in relation to a consumer credit transaction.

(2) This article supplements and does not repeal the "Credit Insurance Act", article 10 of title 10, C.R.S. The provisions of this code concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, and the similar provisions of the "Credit Insurance Act" do not apply to creditors and consumers.

5-4-103. Definitions - "consumer credit insurance" - "Credit Insurance Act".

As used in this code, unless the context otherwise requires:

(1) "Consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided but does not include:

(a) Insurance, as to which a finance charge is imposed and provided in relation to a credit transaction in which a payment is scheduled more than ten years after the extension of credit;

(b) Insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring consumers of the creditor; or

(c) Insurance indemnifying the creditor against loss due to the consumer's default.

(2) "Credit Insurance Act" means the "Credit Insurance Act", article 10 of title 10, C.R.S.

5-4-104. Creditor's provision of and charge for insurance - excess amount of charge.

(1) Except as otherwise provided in this article and subject to the provisions on additional charges contained in section 5-2-202 and maximum charges contained in section 5-2-201, a creditor may agree to provide insurance and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by the creditor. This code does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

(2) The excess amount of a charge for insurance provided for in agreements in violation of this article is an excess charge for the purposes of:

(a) The provisions on remedies and penalties contained in article 5 of this title as to effect of violations on rights of parties under section 5-5-201; and

(b) The provisions on administration contained in article 6 of this title as to civil actions by the administrator under section 5-6-114.

5-4-105. Conditions applying to insurance to be provided by creditor.

(1) If a creditor agrees with a consumer to provide insurance:

(a) The insurance shall be evidenced by an individual policy or certificate of insurance delivered to the consumer or sent to the consumer at his or her address as stated by the consumer within thirty days after the term of the insurance commences under the agreement between the creditor and consumer; or

(b) The creditor shall promptly notify the consumer of any failure or delay in providing the insurance.

5-4-106. Unconscionability.

(1) In applying the provisions of this code on unconscionability contained in sections 5-5-109 and 5-6-112 to a separate charge for insurance, consideration shall be given, among other factors, to:

(a) Potential benefits to the consumer including the satisfaction of the consumer's obligations;

(b) The creditor's need for the protection provided by the insurance; and

(c) The relation between the amount and terms of credit granted and the insurance benefits provided.

(2) If consumer credit insurance otherwise complies with this article and other applicable law, neither the amount nor the term of the insurance nor the amount of a charge therefor is in itself unconscionable.

5-4-107. Maximum charge by creditor for insurance.

(1) Except as provided in subsection (2) of this section, if a creditor contracts for or receives a separate charge for insurance, the amount charged to the consumer for the insurance may not exceed the premium to be charged by the insurer as computed at the time the charge to the consumer is determined conforming to any rate filings required by law and made by the insurer with the commissioner of insurance.

(2) A creditor who provides consumer credit insurance in relation to a revolving credit account may calculate the charge to the consumer in each billing cycle by applying the current premium rate to:

(a) The average daily unpaid balance of the debt in the cycle;

(b) The unpaid balance of the debt or a median amount within a specified range of unpaid balances of debt on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the finance charge, but the specified range shall be the range used for that purpose; or

(c) The unpaid balances of the amount financed calculated according to the actuarial method.

5-4-108. Refund or credit required - amount.

(1) (a) Except as provided in subsection (3) of this section, an appropriate refund or credit of unearned premiums shall be made to the person entitled thereto with respect to any separate charge made to the consumer for insurance if:

(I) The insurance is not provided or is provided for a shorter term than that for which the charge to the consumer for insurance was computed; or

(II) The insurance terminates prior to the end of the term for which it was written because of prepayment in full of the indebtedness or the insurance terminates for any other reason.

(b) All consumer credit insurance shall terminate upon prepayment in full of the indebtedness.

(2) If a refund or credit of unearned premiums is required pursuant to the provisions of subsection (1) of this section:

(a) The original creditor, if he or she is the holder of the indebtedness at the time of prepayment, shall either promptly make the appropriate refund or credit or shall promptly notify the consumer and the insurer in writing that a refund or credit is due. Upon the receipt of notice that a refund or credit is due, the insurer shall promptly make an appropriate refund or credit of unearned premiums pursuant to the provisions of section 10-10-110 (2), C.R.S. For purposes of this section, "original creditor" means the person to whom the indebtedness was initially payable, and "insurer" means every person engaged as principal, indemnitor, surety, or contractor in the business of making contracts of insurance, excluding any licensed insurance agent.

(b) (I) The assignee, if the indebtedness has been assigned, shall either promptly make the appropriate refund or credit or shall promptly notify the consumer, the original creditor, and the insurer, if known, in writing that a refund or credit is due. For the purposes of this section, "assignee" means a person other than the original creditor who at the time of prepayment holds the indebtedness.

(II) The original creditor, upon receipt of notice pursuant to subparagraph (I) of this paragraph (b), shall either promptly make the appropriate refund or credit or shall promptly notify the insurer in writing that a refund or credit of unearned premiums is due.

(c) The insurer, upon the receipt of notice that a refund or credit is due pursuant to paragraph (a) or (b) of this subsection (2), shall make an appropriate refund or credit of unearned premiums pursuant to the provisions of section 10-10-110 (2), C.R.S., and subsection (1) of this section.

(d) An assignee or original creditor gives notice pursuant to this section upon delivery or mailing of the notice to the last address provided to him or her. Once an original creditor or an assignee has notified the appropriate party, as provided in paragraphs (a) and (b) of this subsection (2), the original creditor and the assignee shall have no further obligations.

(3) This article does not require a refund or credit of unearned premiums if:

(a) All refunds and credits due to the debtor under this article amount to less than one dollar; or

(b) The charge for insurance is computed from time to time on the outstanding balance of the indebtedness and the charge relates to only one premium period.

(4) Except as otherwise required, a refund or credit is not required because:

(a) The insurance is terminated by payment of proceeds under the policy; or

(b) The original creditor or assignee pays or accounts for premiums to the insurer in the amounts and at the times determined by the agreement between them; or

(c) The original creditor or assignee receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

(5) If a single type of insurance is terminated by the payment of proceeds under the policy pursuant to paragraph (a) of subsection (4) of this section, a refund or credit of unearned premiums for all other types of consumer credit insurance issued on the same indebtedness shall be made if so required by the provisions of this section and section 10-10-110 (2), C.R.S.

(6) A refund or credit required by subsection (1) of this section is appropriate as to amount if it is computed according to a method prescribed or approved by the commissioner of insurance or a formula filed by the insurer with the commissioner of insurance at least thirty days before the consumer's right to a refund or credit becomes determinable unless the method or formula is employed after the commissioner of insurance notifies the insurer that he or she disapproves it.

5-4-109. Existing insurance - choice of insurer.

If a creditor requires insurance, upon notice to the creditor the consumer shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the consumer or through a policy to be obtained and paid for by the consumer, but the creditor may for reasonable cause decline the insurance provided by the consumer.

5-4-110. Charge for insurance in connection with a deferral, refinancing, or consolidation - duplicate charges.

(1) A creditor may not contract for or receive a separate charge for insurance in connection with a deferral described in section 5-2-204, a refinancing described in section 5-2-205, or a consolidation described in section 5-2-206 unless:

(a) The consumer agrees at or before the time of the deferral, refinancing, or consolidation that the charge may be made;

(b) The consumer is or is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which the consumer would have been entitled had there been no deferral, refinancing, or consolidation;

(c) The consumer receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated under section 5-4-108; and

(d) The charge does not exceed the amount permitted under section 5-4-107.

(2) A creditor may not contract for or receive a separate charge for insurance that duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge.

5-4-111. Cooperation between administrator and commissioner of insurance.

The administrator and the commissioner of insurance are authorized and directed to consult and assist one another in maintaining compliance with this article. They may jointly pursue investigations, prosecute suits, and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the administrator is informed of a violation or suspected violation by an insurer of this article or of the insurance laws, rules, and regulations of this state, the administrator shall advise the commissioner of insurance of the circumstances.

5-4-112. Administrative action of commissioner of insurance.

(1) To the extent that the commissioner's responsibility under this article requires, the commissioner of insurance shall promulgate rules in accordance with article 4 of title 24, C.R.S., with respect to insurers, and with respect to refunds described in section 5-4-108, and, in case of violation, may make an order for compliance.

(2) Sections 24-4-102 to 24-4-106, C.R.S., apply to and govern all administrative action taken by the commissioner of insurance pursuant to this section.

PART 2

CONSUMER CREDIT INSURANCE

5-4-201. Term of insurance.

(1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such

evidence is required, the term of the insurance shall commence no later than when the consumer becomes obligated to the creditor or when the consumer applies for the insurance, whichever is later, except as follows:

(a) If any required evidence of insurability is not furnished until more than thirty days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or

(b) If the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

(2) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt except as follows:

(a) If the insurance relates to a revolving credit account, the term need extend only until the payment of the debt under the account and may be sooner terminated after at least thirty days' notice to the consumer; or

(b) If the consumer is advised in writing that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

(3) The term of the insurance shall not extend more than thirty days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the consumer or as an incident to a deferral, refinancing, or consolidation.

5-4-202. Amount of insurance.

(1) Except as provided in subsection (2) of this section:

(a) In the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in installments, may not at any time exceed the greater of the scheduled or actual amount of the debt; or

(b) In the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid installments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic installments in which it is payable.

(2) If consumer credit insurance is provided in connection with a revolving credit account, the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment.

5-4-203. Filing and approval of rates and forms.

(1) A creditor may not use a form or charge in connection with credit insurance that does not comply with section 10-10-109, C.R.S.

(2) and (3) (Deleted by amendment, L. 2003, p. 1895, 12, effective July 1, 2003.)

PART 3

PROPERTY AND LIABILITY INSURANCE

5-4-301. Property insurance.

(1) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless:

(a) The insurance covers a substantial risk of loss of or damage to property related to the credit transaction;

(b) The amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and

(c) The term of the insurance is reasonable in relation to the terms of credit.

(2) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

(3) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed exclusive of charges for the insurance is one thousand dollars or more and the value of the property is one thousand dollars or more.

5-4-302. Insurance on creditor's interest only.

If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the consumer is on the consumer only to the extent of any deficiency in the effective coverage of the insurance even though the insurance covers only the interest of the creditor.

5-4-303. Liability insurance.

A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction.

5-4-304. Cancellation by creditor.

This section does not apply to an insurance premium loan. A creditor shall not request cancellation of a policy of property or liability insurance except after the consumer's default or in accordance with a written authorization by the consumer, and in either case the cancellation does not take effect until written notice is delivered to the consumer or mailed to the consumer at his or her address as stated by the consumer. The notice shall state that the policy may be canceled on a date not less than ten days after the notice is delivered or, if the notice is mailed, not less than thirteen days after it is mailed.

ARTICLE 5
REMEDIES AND PENALTIES

PART 1
LIMITATIONS ON CREDITORS' REMEDIES

5-5-101. Short title.

This article shall be known and may be cited as the "Uniform Consumer Credit Code - Remedies and Penalties".

5-5-102. Scope.

This part 1 applies to actions or other proceedings to enforce rights arising from consumer credit transactions.

5-5-103. Restrictions on deficiency judgments in consumer credit sales.

(1) This section applies to a consumer credit sale of goods or services. A consumer is not liable for a deficiency unless the creditor has disposed of the goods in accordance with the provisions on the disposition of collateral of the "Uniform Commercial Code" contained in part 6 of article 9 of title 4, C.R.S.

(2) If the creditor repossesses, with or without the aid of judicial process, or voluntarily accepts surrender of goods that were the subject of the sale and in which the creditor has a security interest, the parties obligated are not personally liable to the creditor for the unpaid balance of the debt arising from the sale of a commercial unit of goods of which the cash sale price was three thousand dollars or less, and the creditor's duty to dispose of the collateral is governed by the provisions on the disposition of collateral of the "Uniform Commercial Code" contained in part 6 of article 9 of title 4, C.R.S.

(3) If the creditor repossesses, with or without the aid of judicial process, or voluntarily accepts surrender of goods that were not the subject of the sale but in which the creditor has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was three thousand dollars or less, the parties obligated are not personally liable to the creditor for the unpaid balance of the debt arising from the sale, and the creditor's duty to dispose of the collateral is governed by the provisions on disposition of collateral of the "Uniform Commercial Code" contained in part 6 of article 9 of title 4, C.R.S.

(4) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to revolving credit accounts, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debts secured by various security interests under sections 5-3-202 and 5-3-203.

(5) The consumer may be liable in damages to the creditor if the consumer has misused, abused, or wrongfully damaged the collateral or if, after default and demand in writing, the consumer has wrongfully failed to make the collateral available to the creditor. Nothing in this section shall limit or restrict the remedies of the holders of a

security interest for damage to the collateral because of conversion, destruction, or other wrongful acts.

(6) If the creditor elects to bring an action against the consumer for a debt arising from a consumer credit sale of goods or services, when under this section the creditor would not be entitled to a deficiency judgment if the creditor took possession of the collateral, and obtains judgment:

(a) The creditor may not take possession of the collateral; and

(b) The collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

5-5-104. Insecurity and impaired collateral.

(1) If a creditor takes possession of any collateral because the creditor deems himself or herself insecure or because the creditor feels his or her collateral is impaired, and the creditor fails to prove that, at the time possession was taken, the creditor, in good faith, had reasonable cause to believe that he or she was insecure or that his or her collateral was impaired:

(a) The creditor shall be liable to the consumer for court costs and attorney fees as determined by the court; and

(b) The consumer shall not be liable for any finance charge incurred during the period the consumer is without use of the collateral.

5-5-105. No garnishment before judgment.

Prior to entry of judgment in an action against the consumer for debt arising from a consumer credit transaction, the creditor may not replevin goods, except motor vehicles, of the consumer with the use of force from a dwelling upon an ex parte order of court or attach unpaid earnings of the consumer by garnishment or like proceedings.

5-5-106. Limitation on garnishment - definitions.

(1) For the purposes of this part 1:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld.

(b) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) (a) The maximum part of the aggregate disposable earnings of an individual for any work week that is subjected to garnishment to enforce payment of a judgment arising from a consumer credit transaction may not exceed the lesser of:

(I) Twenty-five percent of the individual's disposable earnings for that week; or

(II) The amount by which the individual's disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by section 206 (a) (1) of the "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq., in effect at the time the earnings are payable; or

(III) The amount by which the individual's disposable earnings for that week exceed thirty times the state minimum hourly wage pursuant to section 15 of article XVIII of the state constitution in effect at the time the earnings are payable.

(b) In the case of earnings for a pay period other than a week, the administrator may prescribe by rule a multiple of the federal minimum hourly wage or the state minimum hourly wage, equivalent in effect to that set forth in subparagraphs (II) or (III) of paragraph (a) of this subsection (2).

(3) No court may make, execute, or enforce an order or process in violation of this section.

(4) It shall not be necessary for any individual to claim the exemptions for that portion of the aggregate disposable earnings that are not subject to garnishment as set forth in subsection (2) of this section, and such exemption from garnishment shall be self-executing in any garnishment procedure.

(5) This section does not repeal, alter, or affect other statutes of this state prohibiting garnishments or providing for larger exemptions from garnishments than are allowed under this section.

5-5-107. No discharge from employment for garnishment.

No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit transaction.

5-5-108. Extortionate extensions of credit.

(1) If it is the understanding of the creditor and the consumer at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the consumer.

(2) If it is shown that an extension of credit was made at an annual percentage rate exceeding forty-five percent calculated according to the actuarial method and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonpayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1) of this section.

5-5-109. Unconscionability - inducement by unconscionable conduct - unconscionable debt collection.

(1) With respect to a transaction that is, gives rise to, or leads the consumer to believe will give rise to a consumer credit transaction, if the court as a matter of law finds:

(a) The agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or

(b) Any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result.

(2) With respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction and award the consumer any actual damages the consumer has sustained.

(3) If it is claimed or appears to the court that the agreement or transaction or any term or part thereof may be unconscionable or that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the agreement or transaction or term or part thereof or of the conduct to aid the court in making the determination.

(4) In applying subsection (2) of this section, consideration shall be given to each of the following factors, among others, as applicable:

(a) Using or threatening to use force or violence against the consumer or members of the consumer's family;

(b) Communicating with the consumer or a member of the consumer's family at frequent intervals or at unusual hours or under other circumstances so that it is a reasonable inference that the primary purpose of the communication was to harass the consumer;

(c) Using fraudulent, deceptive, or misleading representations such as a communication that simulates legal process or that gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law when it is not or threatening or attempting to enforce a right with knowledge or reason to know that the right does not exist;

(d) Causing or threatening to cause injury to the consumer's reputation or economic status by:

(I) Disclosing information affecting the consumer's reputation for credit worthiness with knowledge or reason to know that the information is false;

(II) Communicating with the consumer's employer before obtaining a final judgment against the debtor, except, as permitted by statute, to verify the consumer's employment, to ascertain the consumer's whereabouts, or to request that the consumer contact the creditor;

(III) Disclosing to a person, with knowledge or reason to know that the person does not have a legitimate business need for the information, or in any way prohibited by statute, information affecting the consumer's credit or other reputation; or

(IV) Disclosing information concerning the existence of a debt known to be disputed by the consumer without disclosing that fact;

(e) Engaging in conduct with knowledge that like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against fraudulent or unconscionable agreements or conduct contained in section 5-6-112.

(5) If, in an action in which unconscionability is claimed, the court finds unconscionability pursuant to subsection (1) or (2) of this section, the court may award reasonable fees to the attorney for the consumer. If the court does not find unconscionability and the consumer claiming unconscionability has brought or maintained an action the consumer knew to be groundless, the court may award reasonable fees to the attorney for the party against whom the claim is made. In determining attorney fees, the amount of the recovery on behalf of the consumer is not controlling.

(6) The remedies of this section are in addition to remedies otherwise available for the same conduct under laws other than this code, but double recovery of actual damages may not be had.

(7) For the purpose of this section, a charge or practice expressly permitted by this code is not in itself unconscionable.

5-5-110. Notice of right to cure.

(1) With respect to a consumer credit transaction, after a consumer has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of goods or the mobile home that are collateral, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer pursuant to this section when the creditor delivers the notice to the consumer or mails the notice to the consumer at the consumer's residence, as defined in section 5-1-201 (6).

(2) Except as provided in subsection (3) of this section, the notice shall be in writing and conspicuously state: The name, address, and telephone number of the creditor to which payment is to be made, a brief identification of the credit transaction, the right to cure the default, and the amount of payment and date by which payment must be made to

cure the default. A notice in substantially the following form complies with this subsection (2):

"(Name, address, and telephone number of creditor)

(Account number, if any)

(Brief identification of credit transaction)

(Date) is the LAST DATE FOR PAYMENT.
(Amount) is the AMOUNT NOW DUE.

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly."

(3) If the consumer credit transaction is a consumer insurance premium loan, the notice shall conform to the requirements of subsection (2) of this section, and a notice in substantially the form specified in subsection (2) of this section shall be deemed compliance with this subsection (3) except for the following:

(a) In lieu of a brief identification of the credit transaction, the notice shall identify the transaction as a consumer insurance premium loan and shall identify each policy or contract that may be canceled;

(b) In lieu of the statement in the form of notice specified in subsection (2) of this section that the creditor may exercise its rights under law, a statement shall be included that each policy or contract identified in the notice may be canceled; and

(c) The last paragraph of the form of notice specified in subsection (2) of this section shall be omitted.

(4) A notice of right to cure delivered or mailed to a cosigner pursuant to this section shall be modified to state that the consumer is late in making his or her payment, include the consumer's name, and that if the amount now due is not paid by the last date for payment, the creditor may exercise its rights against the consumer, cosigner, or both.

5-5-111. Cure of default.

(1) With respect to a consumer credit transaction, except as provided in subsection (2) of this section, after a default consisting only of the consumer's failure to make a required payment, a creditor, because of that default, may neither accelerate maturity of the unpaid balance of the obligation nor take possession of or otherwise enforce a security interest in the goods or the mobile home that are collateral until twenty days after giving the consumer a notice of right to cure described in section 5-5-110. Until the expiration of the minimum applicable period after the notice is given, all defaults consisting of a failure to make the required payment may be cured by tendering to the creditor the amount of all unpaid sums due at the time of the tender, without acceleration,

plus any unpaid delinquency or deferral charges. Cure restores the consumer to his or her rights under the agreement as though the defaults had not occurred.

(2) With respect to defaults on the same obligation, other than defaults on an obligation secured by a mobile home, after a creditor has once given the consumer a notice of right to cure described in section 5-5-110, this section gives no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral with respect to any subsequent default that occurs within twelve months of such notice. With respect to defaults on the same obligation that is secured by a mobile home, this section gives no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral with respect to any third default that occurs within twelve months of such notice. For the purpose of this section, in connection with revolving credit accounts, the obligation is the consumer's account, and there is no right to cure and no limitation on the creditor's rights with respect to any default that occurs within twelve months after an earlier default as to which a creditor has given the consumer notice of right to cure.

(3) Unless a creditor has provided the cosignor on a consumer credit transaction with a notice of right to cure that complies with section 5-5-110 and this section, in addition to the notice of right to cure provided to the consumer, the creditor may neither accelerate maturity of the unpaid balance of the obligation as to the cosignor nor report that amount on the cosignor's consumer report with a consumer reporting agency as defined in section 12-14.3-102, C.R.S., and 15 U.S.C. sec. 1681a.

(4) This section and the provisions on waiver, agreements to forego rights, and settlement of claims do not prohibit a consumer from voluntarily surrendering possession of goods that are collateral and the creditor from thereafter enforcing its security interest in the goods at any time after default.

(5) This section shall not apply to consumer credit transactions that are payable in four or fewer installments.

5-5-112. Attorney fees.

(1) With respect to a consumer credit transaction, the agreement may provide for the payment by the consumer of reasonable attorney fees not in excess of fifteen percent of the unpaid debt after default and referral to an attorney not a salaried employee of the creditor or such additional fee as may be directed by the court. A provision in violation of this section is unenforceable.

(2) This section does not authorize the imposition of attorney fees for preparation of a notice of right to cure if the consumer cures the default pursuant to sections 5-5-110 and 5-5-111.

PART 2

CONSUMERS' REMEDIES

5-5-201. Effect of violations on rights of parties.

(1) If a creditor has violated the provisions of this code applying to limitations on the schedule of payments or loan term for supervised loans contained in section 5-2-308 or authority to make supervised loans contained in section 5-2-301, the consumer is not obligated to pay the finance charge and has a right to recover from the person violating this code or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt a penalty in an amount determined by the court not in excess of three times the amount of the finance charge. With respect to violations arising from consumer credit transactions made pursuant to revolving credit accounts, no action pursuant to this subsection (1) may be brought more than two years after the violation occurred. With respect to violations arising from other consumer credit transactions, no action pursuant to this subsection (1) may be brought more than one year after the due date of the last scheduled payment of the agreement with respect to which the violation occurred.

(2) A consumer is not obligated to pay a charge in excess of that allowed by this code, and if a consumer has paid an excess charge he or she has a right to a refund. A refund may be made by reducing the consumer's obligation by the amount of the excess charge. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against consumers arising from the debt.

(3) If a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from that person a penalty in an amount determined by a court not exceeding the greater of either the amount of the finance charge or ten times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this code, the penalty may be recovered even though the creditor has refunded the excess charge. No penalty pursuant to this subsection (3) may be recovered if a court has ordered a similar penalty assessed against the same person in a civil action by the administrator described in section 5-6-114. With respect to excess charges arising from revolving credit accounts, no action pursuant to this subsection (3) may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions, no action pursuant to this subsection (3) may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(4) Except as otherwise provided, no violation of this code impairs rights on a debt.

(5) If an employer discharges an employee in violation of the provisions prohibiting discharge contained in section 5-5-107, the employee may within ninety days bring a civil action for recovery of wages lost as a result of the violation and for an order

requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

(6) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no liability is imposed under subsections (1) and (3) of this section, and the validity of the transaction is not affected.

(7) In any case in which it is found that a creditor has violated this code, the court may award reasonable attorney fees incurred by the consumer.

(8) If a creditor repeatedly fails to provide a consumer with a statement of an annual percentage rate or finance charge as and to the extent required by the provisions on disclosure contained in section 5-3-101 of this code and has received written notice from the administrator of such repeated failure, any such subsequent failure by the creditor shall relieve any consumer receiving such defective disclosure from any obligation to pay any finance charge in connection with such consumer credit transaction.

5-5-202. Civil liability for violation of disclosure provisions.

(1) Except as otherwise provided in this section, a creditor who, in violation of the provisions on disclosure contained in section 5-3-101, other than the provisions on advertising, fails to disclose information to a person entitled to the information under this code is liable to that person in an amount equal to the sum of:

(a) Twice the amount of the finance charge in connection with the transaction, but the liability pursuant to this paragraph (a) shall be not less than one hundred dollars nor more than one thousand dollars; and

(b) In the case of a successful action to enforce the liability under paragraph (a) of this subsection (1), the costs of the action together with reasonable attorney fees as determined by the court.

(2) A creditor has no liability under this section if, within sixty days after discovering an error and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a finance charge in excess of the amount or percentage rate actually disclosed.

(3) A creditor may not be held liable in any action brought under this section for a violation of this code if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(4) Any action that may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the

time the credit was extended or at the time of the assignment unless the assignment was involuntary or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this code and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

(5) No action pursuant to this section may be brought more than one year after the date of the occurrence of the violation.

(6) In this section, creditor includes a person who in the ordinary course of business regularly extends or arranges for the extension of credit or offers to arrange for the extension of credit.

(7) No provision of this section or section 5-5-201 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, interpretation, or written response to a person pursuant to a written request on behalf of such identified person by the administrator or the board of governors of the federal reserve system pursuant to the federal "Truth in Lending Act" or federal "Consumer Leasing Act", notwithstanding that, after such act or omission has occurred, such rule, regulation, interpretation, or written response is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(8) The multiple failure to disclose to any person any information required under this code to be disclosed in connection with a single account under a revolving credit account, other single consumer credit sale, consumer loan, or other extension of consumer credit shall entitle the person to a single recovery under this section, but continued failure to disclose after recovery has been granted shall give rise to rights to additional recoveries.

5-5-203. Consumer's right to rescind certain transactions.

In the case of a consumer credit transaction with respect to which a security interest is retained or acquired in any property that is used as the principal dwelling of the person to whom credit is extended, the consumer shall have the same right to rescind the transaction as provided in the federal "Truth in Lending Act" and regulations thereunder. In order to comply with this code, a creditor shall comply with those provisions on the right of rescission of certain transactions.

5-5-204. Interests in land.

For purposes of the provisions on civil liability for violation of the disclosure provisions contained in section 5-5-202 and on a consumer's right to rescind certain transactions contained in section 5-5-203, "consumer credit transaction" includes a transaction primarily secured by an interest in land without regard to the rate of the finance charge if the transaction is otherwise a consumer credit transaction.

5-5-205. Refunds and penalties as set-off to obligation.

Refunds or penalties to which the consumer is entitled pursuant to this part 2 may be set off against the consumer obligation and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by said sections.

5-5-206. Civil liability for discrimination.

If a person has failed to comply with section 5-3-210, the person aggrieved by such failure to comply has a right to recover actual damages from such person but in no event less than one hundred dollars for actual and exemplary damages nor more than one thousand dollars for actual and exemplary damages. In the case of a successful action to enforce such right of recovery, the aggrieved person shall recover the costs of the action together with reasonable attorney fees as determined by the court.

PART 3

CRIMINAL PENALTIES

5-5-301. Willful violations.

(1) A supervised lender who willfully makes charges in excess of those permitted by the provisions of this code is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(2) A person, other than a supervised financial organization, who willfully engages in the business of making supervised loans without a license in violation of the provisions of this code applying to the authority to make supervised loans described in section 5-2-301 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(3) A person who willfully engages in the business of making consumer credit transactions or of taking assignments of rights against consumers arising therefrom and undertakes direct collection of payments or enforcement of these rights without complying with the provisions of this code concerning notification contained in section 5-6-202 or payment of fees contained in section 5-6-203 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars.

(4) Any person who violates the provisions of this section and by the same act or acts violates the provisions of section 18-15-104 or 18-15-107, C.R.S., or both, shall be prosecuted for the violation of either or both of said sections and not for a violation of this section.

5-5-302. Disclosure violations.

(1) A person is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment if such person willfully and knowingly:

(a) Gives false or inaccurate information or fails to provide information that such person is required to disclose under the provisions of this code on disclosure and advertising or of any related rule of the administrator adopted pursuant to this code;

(b) Uses any rate table or chart in a manner which consistently understates the annual percentage rate determined according to those provisions; or

(c) Otherwise fails to comply with any requirement of the provisions of this code on disclosure and advertising or of any related rule of the administrator adopted pursuant to this code.

ARTICLE 6
ADMINISTRATION

PART 1
POWERS AND FUNCTIONS OF ADMINISTRATOR

5-6-101. Short title.

This article shall be known and may be cited as "Uniform Consumer Credit Code - Administration".

5-6-102. Applicability.

(1) This part 1 applies to persons who in this state:

(a) Make or solicit consumer credit transactions; or

(b) Directly collect payments from or enforce rights against consumers arising from sales, leases, or loans specified in paragraph (a) of this subsection (1) wherever they are made.

5-6-103. Definitions - "administrator".

"Administrator" means the assistant attorney general to be designated by the attorney general. Any district attorney may, with the consent of the administrator, exercise the powers and perform the duties of the administrator as provided in section 5-6-104 (1) (a) and (1) (b) and sections 5-6-105 to 5-6-116.

5-6-104. Powers of administrator - harmony with federal regulations - reliance on rules.

(1) In addition to other powers granted by this code, the administrator, within the limitations provided by law, may:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this code, or commence proceedings on his or her own initiative;

(b) Counsel persons and groups on their rights and duties under this code;

(c) Establish programs for the education of consumers with respect to credit practices and problems;

(d) Make studies appropriate to effectuate the purposes and policies of this code and make the results available to the public;

(e) With approval of the council of advisors on consumer credit subcommittee, adopt, amend, and repeal substantive rules and regulations to carry out the specific provisions of this code, but not with respect to unconscionable agreements or fraudulent or unconscionable conduct, and adopt, amend, and repeal procedural rules to carry out the provisions of this code;

(f) Maintain offices within this state;

(g) Enforce the provisions of article 14.5 of title 12, C.R.S.;

(h) Employ administrative law judges from the office of administrative courts in the department of personnel to conduct hearings on any matter within the administrator's jurisdiction;

(i) License and regulate collection agencies pursuant to article 14 of title 12, C.R.S.; and

(j) Exchange information with another governmental agency or official that has regulatory authority comparable to that of the administrator, subject to an appropriate confidentiality agreement between the administrator and the other agency or official or as otherwise permitted by law. This paragraph (j) shall not be construed to allow the exchange of information with lenders or creditors.

(2) The administrator may adopt rules not inconsistent with the federal "Truth in Lending Act" and federal "Consumer Leasing Act" to assure a meaningful disclosure of credit terms so that a prospective consumer will be able to compare more readily the various credit terms available to him or her and to avoid the uninformed use of credit. Such rules shall supersede any provisions of this code that are inconsistent with the federal "Truth in Lending Act" and federal "Consumer Leasing Act", may contain classifications, differentiations, or other provisions, and may provide for adjustments and exceptions for any class of transactions subject to this code that, in the judgment of the administrator, are necessary or proper to effectuate the purposes of, or to prevent circumvention or evasion of, or to facilitate compliance with, the provisions of this code relating to disclosure of credit terms.

(3) To keep the administrator's rules in harmony with the federal "Truth in Lending Act" and the federal "Consumer Leasing Act" and the regulations prescribed from time to time pursuant to that act by the board of governors of the federal reserve system and with the rules of administrators in other jurisdictions that enact the "Uniform Consumer Credit Code", the administrator, so far as is consistent with the purposes, policies, and provisions of this code, shall:

(a) Before adopting, amending, and repealing rules and regulations, advise and consult with administrators in other jurisdictions that enact the "Uniform Consumer Credit Code"; and

(b) In adopting, amending, and repealing rules and regulations, take into consideration:

(I) The regulations so prescribed by the board of governors of the federal reserve system; and

(II) The rules of administrators in other jurisdictions that enact the "Uniform Consumer Credit Code".

(4) Except for a refund of an excess charge, no liability is imposed under this code for an act done or omitted in good faith in conformity with a rule, regulation, interpretation, or written response to a person pursuant to a written request on behalf of such identified person by the administrator, notwithstanding that after the act or omission the rule, regulation, interpretation, or written response may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

5-6-105. Administrative powers with respect to supervised financial organizations.

(1) With respect to supervised financial organizations, the powers of examination and investigation described in sections 5-2-305 and 5-6-106 and administrative enforcement described in section 5-6-108 shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the administrator under this code may be exercised by the administrator with respect to a supervised financial organization.

(2) If the administrator receives a complaint or other information concerning noncompliance with this code by a supervised financial organization, the administrator shall inform the official or agency having supervisory authority over the organization concerned. The administrator may request information about supervised financial organizations from the officials or agencies supervising them.

(3) The administrator and any official or agency of this state having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this code. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action. The administrator may recover from a supervised financial organization the administrator's reasonable costs incurred in such investigation, suit, or other official action as part of any relief granted the administrator by a court of competent jurisdiction.

5-6-106. Investigatory powers.

(1) If the administrator has reasonable cause to believe that a person has engaged in an act that is subject to action by the administrator, the administrator may make an investigation to determine if the act has been committed, and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon his or her own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any

books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. In any civil action brought by the administrator as a result of such an investigation, the administrator may recover the reasonable costs of making the investigation if the administrator prevails in the action.

(2) If the person's records are located outside this state, the person at his or her option shall either make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

(3) Upon failure without lawful excuse to obey a subpoena or to give testimony, the administrator may apply to the district court for an order compelling compliance.

(4) The administrator shall not make public the name or identity of a person whose acts or conduct he or she investigates pursuant to this section or the facts disclosed in the investigation, but this subsection (4) does not apply to disclosures in actions or enforcement proceedings pursuant to this code.

5-6-107. Application of administrative procedures - provisions.

Except as otherwise provided, the provisions of sections 24-4-102 to 24-4-106, C.R.S., apply to and govern all rules promulgated and all administrative action taken by the administrator pursuant to this article or the provisions on supervised loans contained in part 3 of article 2 of this title; except that section 24-4-104 (3), C.R.S., shall not apply to any such action.

5-6-108. Judicial review.

Any person aggrieved by any final action or order of the administrator and affected thereby is entitled to a review thereof by the Colorado court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

5-6-109. Administrative enforcement orders.

(1) After notice and hearing, the administrator may order a creditor or a person acting in the creditor's behalf to cease and desist from engaging in violations of this code or any rule or order lawfully made pursuant to this code. The order issued by the administrator may also require the creditor or person to make refunds to consumers of excess charges under this code and pay a penalty up to a maximum of one thousand dollars for each violation, all or part of which may be specifically designated for consumer and creditor educational purposes.

(2) A respondent aggrieved by an order of the administrator may obtain judicial review of the order in the Colorado court of appeals. The administrator may obtain an order of the court for enforcement of the administrator's order in the district court under section 24-4-106, C.R.S. All proceedings under this section shall be governed by sections 24-4-105 and 24-4-106, C.R.S.

(3) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction under section 5-6-112.

5-6-110. Assurance of discontinuance.

If it is claimed that a person has engaged in conduct subject to an order by the administrator described in section 5-6-108 or by a court described in sections 5-6-111 to 5-6-113, the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. The assurance may also require the person to make refunds to consumers of excess charges under this code, pay a penalty up to a maximum of one thousand dollars for each violation, all or part of which may be specifically designated for consumer and creditor educational purposes, and reimburse the administrator for the administrator's reasonable costs incurred in investigating the conduct. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance such person engaged in the conduct described in the assurance.

5-6-111. Injunctions against violations of code.

The administrator may bring a civil action to restrain a person from violating this code or rules or regulations promulgated thereunder and for other appropriate relief.

5-6-112. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

(1) The administrator may bring a civil action to restrain a creditor or a person acting in the creditor's behalf from engaging in a course of:

(a) Making or enforcing unconscionable terms or provisions of consumer credit transactions;

(b) Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions;

(c) Conduct of any of the types specified in paragraph (a) or (b) of this subsection (1) with respect to transactions that give rise to or lead persons to believe they will give rise to consumer credit transactions; or

(d) Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit transactions.

(2) In an action brought pursuant to this section, the court may grant relief only if it finds:

(a) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) That the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and

(c) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) Whether the creditor should have reasonably believed at the time consumer credit transactions were made that, according to the credit terms or schedule of payments, there was no reasonable probability of payment in full of the obligation by the consumer;

(b) Whether the creditor reasonably should have known, at the time of the transaction, of the inability of the consumer to receive substantial benefits from the transaction;

(c) Gross disparity between the price of the transaction and its value measured by the price at which similar transactions are readily obtainable by like consumers;

(d) The fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit transactions with the effect of making the transactions, considered as a whole, unconscionable;

(e) The fact that the respondent has knowingly taken advantage of the inability of the consumer reasonably to protect his or her interests by reason of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement, or similar factors; and

(f) Any of the factors set forth in section 5-5-109 (4).

(4) The administrator may bring a civil action to restrain a creditor or a person acting in the creditor's behalf from engaging in a course of making or arranging consumer loans to enable consumers to buy or lease from a particular seller or lessor goods or services, a principal purpose of which course of action is to avoid giving the consumers those rights that they would have had if the transactions were entered into as a consumer credit sale if:

(a) The lender is a person related to the seller or lessor unless the relationship is remote or is not a factor in the transaction;

(b) The seller or lessor guarantees the loans or otherwise assumes the risk of loss by the lender upon the loans;

(c) The loans are conditioned upon the consumer's purchase or lease of the goods or services from the particular seller or lessor, but the lender's payment of proceeds of the loan to the seller or lessor does not in itself establish that the loan was so conditioned; or

(d) The lender, before the lender makes the consumer loan, has knowledge or, from the lender's course of dealing with the particular seller or lessor or from the lender's records, notice of substantial complaints by other consumers of the particular seller's or

lessor's failure or refusal to perform his or her contracts with them and of the particular seller's or lessor's failure to remedy his or her defaults within a reasonable time after notice to him or her of the complaints.

(5) In an action brought pursuant to this code, a charge or practice expressly permitted by this code is not in itself unconscionable.

5-6-113. Temporary relief.

With respect to an action brought to enjoin violations of this code under section 5-6-111 or unconscionable agreements or fraudulent or unconscionable conduct under section 5-6-112, the administrator may apply to the court for a temporary restraining order or a preliminary injunction against a respondent pending final determination of proceedings. If the court finds after a hearing that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any such temporary restraining order or preliminary injunction it deems appropriate. The court may also issue such orders or judgments as may be necessary to completely compensate or restore to his or her original position any consumer affected by such violation, agreement, or conduct or if there is reasonable cause to believe funds to make refunds of excess charges under this code will not be available at a future date. No bond or other security is required of the administrator before relief under this section may be granted.

5-6-114. Civil actions by administrator.

(1) (a) The administrator may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this code, violating any of the provisions of this code applying to limitations on the schedule of payments or loan term for supervised loans or authority to make supervised loans, or for disclosure violations. An action may relate to transactions with more than one consumer. If it is found that an excess charge has been made, the court shall order the respondent to refund to the consumer the amount of the excess charge and to pay a penalty to the consumer as provided in sections 5-5-201 and 5-5-202. In addition, the court may assess a civil penalty of up to one thousand dollars for each violation of this code.

(b) If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this code or if a creditor has refused to refund an excess charge within a reasonable time after demand by the consumer or the administrator, the court may also order the respondent to pay to the consumers a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the finance charge or ten times the amount of the excess charge. Refunds and penalties to which the consumer is entitled pursuant to this subsection (1) may be set off against the consumer's obligation.

(c) If a consumer brings an action against a creditor to recover an excess charge or civil penalty, an action by the administrator to recover for the same excess charge or civil penalty shall be stayed while the consumer's action is pending and shall be dismissed if the consumer's action is dismissed with prejudice or results in a final judgment granting or denying the consumer's claim. There shall be no double recovery for refunds of excess charges or a penalty payable to the consumer.

(d) With respect to excess charges arising from revolving accounts, no action pursuant to this subsection (1) may be brought more than four years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions, no action pursuant to this subsection (1) may be brought more than four years after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(e) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection (1).

(2) The administrator may bring a civil action against a creditor or a person acting in the creditor's behalf to recover a civil penalty for willfully violating this code, and, if the court finds that the defendant has engaged in a course of repeated and willful violations of this code, it may assess a civil penalty of no more than five thousand dollars. All or part of the penalty under this subsection (2) may be specifically designated for consumer and creditor education. No civil penalty pursuant to this subsection (2) may be imposed for violations of this code occurring more than four years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

(3) If the administrator prevails in an action brought under this section, the administrator may recover his or her reasonable costs in investigating and bringing the action and request an order for reimbursement of his or her reasonable attorney fees.

5-6-115. Jury trial.

In an action brought by the administrator under this code, the administrator has no right to trial by jury, but this will not prevent a defendant from requesting a jury trial under the Colorado rules of civil procedure.

5-6-116. Consumers' remedies not affected.

The grant of powers to the administrator in this article does not affect remedies available to consumers under this code or under other principles of law or equity.

PART 2

NOTIFICATION AND FEES

5-6-201. Applicability.

(1) Except as provided in subsections (2) and (3) of this section, this part 2 applies if a person:

(a) Makes consumer credit sales and charges or collects a finance charge, or makes consumer leases; or

(b) Takes assignments of and undertakes direct collection of payments from, or enforcement of rights against, consumers arising from consumer credit sales or consumer leases.

(2) This part 2 does not apply to supervised lenders described in section 5-1-301 (46), persons making consumer loans described in section 5-1-301 (15), or to persons licensed as collection agencies pursuant to article 14 of title 12, C.R.S.

(3) Sections 5-6-203 (5) and 5-6-204 of this part 2 apply to all fees collected under this code.

5-6-202. Notification.

(1) Persons subject to this part 2 shall file notification with, and pay the fee prescribed in section 5-6-203 to, the administrator within thirty days after commencing business in this state and, thereafter, on or before January 31 of each year. The notification shall state:

(a) Name of the person;

(b) Name in which business is transacted if different from paragraph (a) of this subsection (1);

(c) Address of principal office, which may be outside this state;

(d) Address of all offices or retail stores, if any, in this state at which consumer credit sales or consumer leases are made or, in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted;

(e) If consumer credit sales or consumer leases are made otherwise than at an office or retail store in this state, a brief description of the manner in which they are made;

(f) Address of designated agent upon whom service of process may be made in this state described in section 5-1-203; and

(g) Whether supervised loans are made.

(2) If information in a notification becomes inaccurate after filing, no further notification is required until the following January 31.

5-6-203. Fees.

(1) A person required to file notification shall, with the first notification and on or before January 31 of each year thereafter, pay to the administrator a nonrefundable annual notification fee. The administrator is entitled to examine the loans, business, and records of such person without issuance of a subpoena.

(2) (Deleted by amendment, L. 2009, (HB 09-1141), ch. 41, p. 158, 5, effective January 1, 2010.)

(3) Persons required to file notification who are assignees of consumer credit sales or consumer leases shall pay an additional nonrefundable annual volume fee on or before January 31 of each year for each one hundred thousand dollars, or part thereof, of the

unpaid balances at the time of the assignment of obligations arising from consumer credit sales or consumer leases made in this state and taken by assignment during the preceding calendar year.

(4) A penalty of five dollars per day shall be imposed on any person failing to comply with this section; except that, if the fees required by this section are paid on or before March 1 of each year, no penalty shall be imposed. If a person required to file notification and pay a notification fee fails to do so, the consumer shall have no obligation to pay the finance charge due under the consumer credit transaction, and any finance charges paid shall be refunded to the consumer. In addition, if the administrator examines the loans, business, or records of such person, the person shall pay the reasonable and necessary examination expenses of the administrator.

(5) The administrator shall determine the amount of the notification, volume, and license fees required in this section and in section 5-2-302 and may periodically reduce or increase the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3) and (4), C.R.S., to reduce the uncommitted reserves of the uniform consumer credit code cash fund created in section 5-6-204 to which all or any portion of one or more of the fees is credited; except that the fund shall be subject to an alternative reserve balance of one-third of the amount expended during the previous fiscal year.

5-6-204. Cash fund created.

(1) All fees collected under this code and under article 10 of this title shall be credited to the uniform consumer credit code cash fund, which fund is hereby created, and all moneys credited to such fund shall be used for the administration and enforcement of this code, article 10 of this title, and article 14.5 of title 12, C.R.S. Interest earned on the fund shall be credited to the fund. The general assembly shall make annual appropriations out of the fund for the administration and enforcement of this code, article 10 of this title, and article 14.5 of title 12, C.R.S.; except that expenditures by the administrator for consumer and creditor education resulting from the penalties provided in sections 5-2-303 (7) (f), 5-6-109 (1), 5-6-110, and 5-6-114 (2) shall not require appropriation by the general assembly if such expenditures do not exceed twenty-five thousand dollars per fiscal year and do not include the hiring of any full-time equivalents.

(2) Notwithstanding any provision of subsection (1) of this section to the contrary, on March 27, 2002, the state treasurer shall deduct one hundred fifty thousand dollars from the uniform consumer credit code cash fund and transfer such sum to the general fund.

(3) Notwithstanding any provision of subsection (1) of this section to the contrary, on March 5, 2003, the state treasurer shall deduct one hundred thousand dollars from the uniform consumer credit code cash fund and transfer such sum to the general fund.

(4) Notwithstanding subsection (1) of this section, the state treasurer shall transfer the penalties collected pursuant to section 5-6-114 (1) (a) to the general fund.

PART 3

COUNCIL OF ADVISORS ON CONSUMER CREDIT

5-6-301. Council of advisors on consumer credit.

(1) There is hereby created the council of advisors on consumer credit consisting of nine members who shall be appointed by the governor. One of the advisors shall be designated by the governor as chairperson. In appointing members of the council, the governor shall seek to achieve a fair representation from the various segments of the consumer credit industry and public.

(2) The term of office of each member of the council is three years. A member chosen to fill a vacancy arising otherwise than by expiration of a term shall be appointed for the unexpired term of the member whom he or she is to succeed. A member of the council is eligible for reappointment.

(3) Members of the council shall serve without compensation but are entitled to reimbursement of actual and necessary expenses incurred in the performance of their duties.

5-6-302. Function of council - conflict of interest.

(1) The council shall advise and consult with the administrator concerning the exercise of the administrator's powers under this code and may make recommendations to the administrator. Members of the council may assist the administrator in obtaining compliance with this code. Since it is an objective of this part 3 to obtain competent representatives of creditors and the public to serve on the council and to assist and cooperate with the administrator in achieving the objectives of this code, service on the council shall not in itself constitute a conflict of interest regardless of the occupations or associations of the members.

(2) (a) There is hereby created a subcommittee of the council of advisors on consumer credit for the purpose specified in paragraph (b) of this subsection (2). The subcommittee shall consist of the attorney general, the chairperson of the council, and three members of the council appointed by such chairperson. Of the subcommittee members who are also members of the council, two shall be representatives of the consumer credit industry and two shall be representatives of the public. Any action taken by a majority of the subcommittee shall constitute action by the council.

(b) The subcommittee may review, repeal, amend, or modify any rule promulgated by the administrator pursuant to section 5-6-104 (1) (e).

ARTICLE 7

INSURANCE PREMIUM FINANCING

5-7-101 to 5-7-103. (Repealed)

ARTICLE 9

EFFECTIVE DATE

5-9-101. Time of taking effect prior to June 30, 2000 - provisions for transition.

(1) Except as otherwise provided in this section, this code as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, took effect at 12:01 a.m. on October 1, 1971, and was in effect through June 30, 2000.

(2) To the extent appropriate to permit the administrator to prepare for operation of this code as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, when it took effect and to act on applications for licenses to make supervised loans under this code as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, (subsection (1) of section 5-3-503), the provisions on supervised loans (part 5) of the article on loans (article 3 of this title) and of the article on administration (article 6 of this title) took effect on July 1, 1971, and were in effect through June 30, 2000.

(3) Transactions entered into before October 1, 1971, and the rights, duties, and interests flowing from them thereafter, may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this code as though the repeal, amendment, or modification had not occurred, but this code, as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, applies to:

(a) Refinancings, consolidations, and deferrals made on or after October 1, 1971, and before July 1, 2000, concerning sales, leases, and loans whenever made;

(b) Sales or loans made on or after October 1, 1971, and before July 1, 2000, pursuant to revolving charge accounts (section 5-2-108) and revolving loan accounts (section 5-3-108) entered into, arranged, or contracted for before October 1, 1971; and

(c) All credit transactions made before October 1, 1971, insofar as the article on remedies and penalties (article 5 of this title) limits the remedies of creditors.

(4) With respect to revolving charge accounts (section 5-2-108) and revolving loan accounts (section 5-3-108) entered into, arranged, or contracted for before October 1, 1971, disclosure pursuant to the provisions on disclosure (section 5-2-310 and section 5-3-309), shall be made not later than thirty days after October 1, 1971.

5-9-101.5. Time of taking effect - provisions for transition.

(1) Except as otherwise provided in this section, this code as it exists following the repeal and reenactment contained in House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, takes effect at 12:01 a.m. on July 1, 2000.

(2) Transactions entered into before July 1, 2000, and the rights, duties, and interests flowing from them thereafter, may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or

modified by this code as though the repeal, amendment, or modification had not occurred, but this code applies to:

(a) Refinancings, consolidations, and deferrals made on or after July 1, 2000, concerning sales, leases, and loans whenever made;

(b) Sales or loans made on or after July 1, 2000, pursuant to revolving credit accounts entered into, arranged, or contracted for before July 1, 2000; and

(c) All credit transactions made before July 1, 2000, insofar as article 5 of this title limits the remedies of creditors. Notwithstanding anything to the contrary, the disclosures described in sections 5-3-105 (5), 5-3-106, 5-5-110 (4), and 5-5-111 (3) of this code take effect January 1, 2001.

5-9-102. Continuation of licensing prior to July 1, 2000.

Notwithstanding the repeal and reenactment of articles 2 and 3 of chapter 73, C.R.S. 1963, by this code, all persons licensed or otherwise authorized under the provisions of articles 2 or 3 of chapter 73, C.R.S. 1963, immediately prior to October 1, 1971, are licensed to make supervised loans under this code as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, pursuant to the provisions on supervised loans of the article on loans (part 5 of article 3 of this title) in effect on and after October 1, 1971, but before July 1, 2000, and all provisions of said sections apply to the persons so previously licensed or authorized. The administrator may, but is not required to, deliver evidence of licensing to the persons so previously licensed or authorized.

5-9-102.5. Continuation of licensing after July 1, 2000.

Notwithstanding the repeal and reenactment of part 5 of article 3 of this title by House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, all persons licensed or otherwise authorized under the provisions of part 5 of article 3 immediately prior to July 1, 2000, are licensed to make supervised loans under this code pursuant to the provisions on supervised loans contained in part 3 of article 2 of this title, and all provisions of said part 3 apply to the persons so previously licensed or authorized. The administrator may, but is not required to, deliver evidence of licensing to the persons so previously licensed or authorized.

5-9-103. (Reserved)

ARTICLE 9.5

REFUND ANTICIPATION LOANS

(Effective November 1, 2010.)

5-9.5-101. Short title.

This article shall be known and may be cited as the "Refund Anticipation Loans Act".

5-9.5-102. Legislative declaration - scope.

The general assembly hereby finds, determines, and declares that it is in the interest of the public health, safety, and welfare to enact minimum protections for the benefit of consumers availing themselves of refund anticipation loans offered by facilitators.

5-9.5-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Administrator" means the administrator designated in section 5-6-103.

(2) "Consumer" means a natural person who is solicited for, applies for, or receives the proceeds of a refund anticipation loan.

(3) "Electronic return originator" means a person authorized by the internal revenue service to originate the electronic submission of income tax returns to the internal revenue service.

(4) "Person" has the meaning set forth in section 2-4-401, C.R.S.

(5) "Refund anticipation loan" means a loan made to a Colorado consumer based on the Colorado consumer's anticipated income tax refund.

(6) (a) "Refund anticipation loan facilitator" or "facilitator" means a person who, individually or in conjunction or cooperation with another person, solicits the execution of, processes, arranges for, receives, or accepts an application or agreement for a refund anticipation loan or in any other manner facilitates the making of a refund anticipation loan and includes an electronic return facilitator.

(b) "Refund anticipation loan facilitator" does not include a person validly:

(I) Doing business as a bank, thrift, savings association, or credit union under the laws of the United States or of this state or is an affiliate of such an entity that is acting as a servicer for that entity;

(II) Practicing as a certified public accountant licensed under article 2 of title 12, C.R.S.; or

(III) Licensed as an attorney by the Colorado supreme court in accordance with section 12-5-101, C.R.S.

5-9.5-104. Restriction on facilitating refund anticipation loans.

A person shall not act as a refund anticipation loan facilitator unless the person is, or is directly employed by, an electronic return originator.

5-9.5-105. Disclosures required.

(1) A facilitator shall not facilitate a refund anticipation loan unless the facilitator makes the disclosures required by subsections (2), (3), and (4) of this section.

(2) **Fee schedule to be posted.** (a) Every place of business in which facilitators facilitate refund anticipation loans shall post a schedule showing the current fees for facilitating refund anticipation loans and for the electronic filing of a consumer's tax return.

(b) Each fee schedule posted pursuant to this subsection (2) shall contain examples of the refund anticipation loan annual percentage rates for refund anticipation loans of two hundred dollars, five hundred dollars, one thousand dollars, one thousand five hundred dollars, two thousand dollars, and five thousand dollars.

(c) Each fee schedule shall also prominently contain the following statement, in at least twenty-eight-point, bold-faced type and in both English and Spanish:

NOTICE

When you take out a refund anticipation loan, you are taking out a loan by borrowing money against your tax refund. If your tax refund is less than expected, you will still owe the entire amount of the loan. If your refund is delayed, you may have to pay additional costs. YOU CAN USUALLY GET YOUR REFUND IN 8 TO 15 DAYS WITHOUT GETTING A LOAN OR PAYING EXTRA FEES. You can have your tax return filed electronically and your refund direct-deposited into your own bank account without obtaining a loan or other paid product. You can make complaints regarding your refund anticipation loan to the administrator of the Uniform Consumer Credit Code in the Colorado state attorney general's office at [current telephone number].

(d) The fee schedule and notice required by this subsection (2) shall be made on a sign measuring no less than sixteen inches by twenty inches and shall be displayed conspicuously and in a prominent location.

(3) **Oral disclosures.** (a) When a consumer applies for a refund anticipation loan, the facilitator shall orally disclose to the consumer:

(I) That the product is a loan that only lasts one to two weeks;

(II) That, if the consumer's tax refund is less than expected, the consumer is liable for the full amount of the loan and must repay any difference;

(III) The amount of the refund anticipation loan fee; and

(IV) The refund anticipation loan interest rate.

(b) The oral disclosure required under this subsection (3) shall be made in English, Spanish, or any other language that the facilitator uses to communicate orally with the consumer.

(4) **Written statement.** (a) When a consumer applies for a refund anticipation loan and before closing the refund anticipation loan, the facilitator facilitating the loan shall give the consumer a written statement informing the consumer:

(I) That a refund anticipation loan is a loan and is not the borrower's actual income tax refund;

(II) That the consumer may file an income tax return electronically without applying for a refund anticipation loan;

(III) That the consumer is responsible for repayment of the loan and related fees if the tax refund is not paid or is insufficient to repay the loan;

(IV) Any fee that will be charged if the loan is not approved;

(V) The average time, as published by the federal internal revenue service, within which a taxpayer can expect to receive a refund for an income tax return filed:

(A) Electronically, and the refund is deposited directly into the taxpayer's financial institution account or mailed to the taxpayer; and

(B) By mail, and the refund is deposited directly into the taxpayer's financial institution account or mailed to the taxpayer;

(VI) That the federal internal revenue service does not guarantee:

(A) Payment of the full amount of the anticipated refund;

(B) A specific date on which it will mail a refund or deposit the refund into a taxpayer's financial institution account; or

(C) The estimated time within which the proceeds of the refund anticipation loan will be paid to the consumer if the loan is approved;

(VII) The following information, specific to the consumer:

(A) The total fees for the loan; and

(B) The estimated annual percentage rate for the loan, calculated using the guidelines established under the federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq., as amended;

(VIII) The procedure for making a complaint to the administrator regarding the refund anticipation loan, including the current address, telephone number, or web site of the administrator to which such complaints may be directed.

(b) The written statement required under this subsection (4) shall be provided to the consumer in English, Spanish, or both English and Spanish, as requested by the consumer.

5-9.5-106. Unlawful acts - fine.

Any person who willfully violates this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

5-9.5-107. Enforcement - investigation - penalties.

(1) The administrator shall enforce this article. To carry out this responsibility, the administrator is authorized to:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the administrator's own initiative;

(b) Issue and enforce cease-and-desist or other administrative enforcement orders in the same manner as set forth in section 5-6-109;

(c) Make investigations, issue subpoenas to require the attendance of witnesses or the production of documents, administer oaths, and conduct hearings in aid of any investigation or inquiry necessary to administer the provisions of this article;

(d) Bring a civil action to restrain a person from violating this article and for other appropriate relief in the same manner as set forth in sections 5-6-111 to 5-6-114 and assess a civil penalty of up to one thousand dollars per violation; and

(e) Use any of the administrator's enforcement powers to restrain or take other action against any person found to be facilitating or enforcing refund anticipation loans in violation of this article.

5-9.5-108. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article that can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

5-9.5-109. Repeal of article.

(1) This article is repealed, effective September 1, 2019.

(2) Prior to the repeal of this article, the functions of the administrator under this article shall be reviewed as provided for in section 24-34-104 (50.5), C.R.S.

COLORADO RENTAL PURCHASE AGREEMENT ACT

ARTICLE 10
RENTAL PURCHASE AGREEMENTS

PART 1
GENERAL PROVISIONS

5-10-101. Short title.

This article shall be known and may be cited as the "Colorado Rental Purchase Agreement Act".

5-10-102. Legislative declaration.

(1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are to:

(a) Simplify, clarify, and modernize the law governing rental purchase agreements;

(b) Provide certain disclosures to consumers who enter into rental purchase agreements and to promote consumer understanding of the terms of rental purchase agreements;

(c) To protect consumers against unfair practices by some rental purchase dealers, having due regard for the interest of legitimate and scrupulous rental dealers; and

(d) To permit and encourage the development of fair and economically sound rental purchase practices.

5-10-103. Waiver - agreement to forego rights - prohibited.

Except as otherwise provided in this article, a lessor or lessee, as those terms are defined in section 5-10-301, may not waive or agree to forego rights or benefits under this article, and any attempt to waive or agree to forego such rights or benefits is void.

5-10-104. Effective date.

Notwithstanding the provisions of section 5-9-101, this article shall take effect January 1, 1991.

5-10-105. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this article, the "Uniform Commercial Code" and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, supplement the provisions of this article.

PART 2

SCOPE OF ARTICLE

5-10-201. Application.

(1) This article shall apply to a rental purchase agreement, or acts, practices, or conduct relating to a rental purchase agreement if:

(a) The rental purchase agreement is entered into in this state; or

(b) The lessee is a resident of this state at the time the lessor offering the rental purchase agreement solicits the rental purchase agreement or modification thereof, whether such solicitation is made personally, by mail, or by telephone.

(2) For the purposes of this article, the residence of the lessee is the address given by the lessee as the lessee's residence in any writing signed by the lessee in connection with the rental purchase agreement. Unless the lessee notifies the lessor in writing of a new or different residence address, the given residence address is presumed to be unchanged.

5-10-202. Exclusions.

(1) This article shall not apply to, and an agreement that complies with this article is not governed by the provision relating to:

(a) A "consumer credit sale" as that term is defined in section 5-1-301 (11);

(b) A "consumer lease" as that term is defined in section 5-1-301 (14);

(c) A "consumer loan" as that term is defined in section 5-1-301 (15);

(d) and (e) Repealed.

(f) A "home solicitation sale" as that term is defined in section 5-3-401;

(g) A "sale of goods" as that term is defined in section 5-1-301 (39);

(h) A "security interest" as that term is defined in section 4-1-201 (b) (35), C.R.S.;

(i) Any lease for agricultural, business, or commercial purposes;

(j) Any lease of money or intangible personal property.

PART 3

DEFINITIONS

5-10-301. Definitions.

(1) As used in this article, unless otherwise required by the context:

(a) "Administrator" means the administrator designated in section 5-6-103.

(b) "Advertisement" means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a rental purchase agreement.

(c) "Cash price" means the price at which a lessor in the ordinary course of business would offer the property that is the subject of a rental purchase agreement to the lessee for cash on the date of the execution of the rental purchase agreement.

(d) "Consummate" means the act of the lessee in entering into a rental purchase agreement.

(e) "Lessee" means a natural person who rents personal property under a rental purchase agreement.

(f) "Lessor" means a person, firm, or corporation who in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of property under a rental purchase agreement.

(g) "Liability damage waiver" means a contract or contractual provision, whether separate from or a part of a rental purchase agreement, whereby the lessor agrees, for a charge, to waive any and all claims against the lessee for any damages to, or loss of, the property which is the subject of the rental purchase agreement during the term of the rental agreement.

(h) "Period" means a day, week, month, or other subdivision of the year.

(i) "Personal property" means any property which is made available for a rental purchase agreement and which is not considered real property under the laws of this state.

(j) "Rental purchase agreement" means an agreement for the use of personal property by an individual primarily for personal, family, or household purposes, for an initial period of four months or less, whether or not there is any obligation beyond the initial period, that is automatically renewable with each payment and that permits the lessee to become the owner of the property.

PART 4

DISCLOSURES AND FORM OF WRITING

5-10-401. Disclosures.

(1) A lessor shall disclose to a lessee in a rental purchase agreement the information required either by this part 4 or by the provisions of the federal "Consumer Credit Protection Act" if the federal "Consumer Credit Protection Act" is amended to cover disclosure in a rental purchase agreement. In a rental purchase agreement, the lessor shall disclose the following:

(a) A brief description of the leased property, sufficient to identify the property to the lessee and lessor;

(b) The total number of payments and the total amount of such payments necessary to acquire ownership;

(c) The number, amount, and timing of each payment, including taxes paid to or through the lessor;

(d) A statement that the lessee will not own the property until the lessee has made the total number of payments and the total amount of such payments necessary to acquire ownership;

(e) A statement of all other charges which the lessee may have to pay together with the amount of any such charge and the conditions under which any such charge shall be incurred;

(f) If applicable, a statement that the lessee is responsible for the fair market value of the property if and as of the time it is lost, stolen, damaged, or destroyed;

(g) A statement indicating whether the property is new or used; except that it is not a violation of this paragraph (g) to indicate that the property is used if it is actually new;

(h) A statement that, at any time after the first lease payment is made, the lessee may acquire ownership of the property, and a brief explanation of the price, formula, or other method for determining the price at which the property may be purchased;

(i) A brief explanation of the lessee's right to reinstate, and a description of the amount, or method of determining the amount, of any penalty or other charge for reinstatement as established in section 5-10-602;

(j) The cash price of the property subject to the rental purchase agreement; and

(k) A statement of the maintenance services, if any, the lessor will provide with respect to the property subject to the rental purchase agreement.

(2) In addition to the disclosures required pursuant to subsection (1) of this section, the lessor shall also make the following disclosure:

NOTICE TO LESSEE -- READ BEFORE SIGNING

(1) DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.

(2) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

(3) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

(4) YOU HAVE THE RIGHT TO EXERCISE ANY EARLY BUY-OUT OPTION AS PROVIDED IN THIS AGREEMENT. EXERCISE OF THIS

OPTION MAY RESULT IN A REDUCTION OF YOUR TOTAL COST TO ACQUIRE OWNERSHIP UNDER THIS AGREEMENT.

(5) IF YOU ELECT TO MAKE WEEKLY RATHER THAN MONTHLY PAYMENTS AND EXERCISE YOUR PURCHASE OPTION, YOU MAY PAY MORE FOR THE LEASED PROPERTY.

5-10-402. Form requirements.

(1) The information required by this part 4:

(a) Shall be disclosed in writing in a rental purchase agreement;

(b) Shall be set forth clearly and conspicuously, in not less than eight point standard type;

(c) Shall be set apart and not contain any information not directly related to the disclosures;

(d) Shall be stated using words and phrases of common meaning;

(e) Need not be contained in a single writing or made in the order set forth in this part 4; and

(f) May be supplemented by additional information or explanations supplied by the lessor, so long as the additional information is not stated, utilized, or placed in a manner which will confuse the lessee or contradict, obscure, or distract attention from the required information. The additional information or explanations shall not have the effect of circumventing, evading, or unduly complicating the information required to be disclosed.

(2) The lessor shall disclose all information required by this part 4 before the rental purchase agreement is consummated.

(3) Before any payment is due, the lessor shall furnish the lessee with an exact copy of the rental purchase agreement, which shall be signed by the lessee and which shall evidence the lessee's agreement. If there is more than one lessee in a rental purchase agreement, delivery of a copy of the rental purchase agreement to one of the lessees constitutes compliance with this subsection (3).

5-10-403. Receipts.

The lessor shall furnish the lessee a written receipt for each payment made in cash or by any other method of payment that does not provide evidence of payment when any such payment is delivered in person during normal working hours.

PART 5

LIMITATION ON AGREEMENTS AND PRACTICES

5-10-501. Acquiring ownership.

At any time after the first lease payment is made, the lessee may acquire ownership of the property under the terms specified in the rental purchase agreement.

5-10-502. Prohibited provisions.

(1) A rental purchase agreement shall not contain a provision requiring any of the following:

(a) Assignment of earnings. No lessor shall accept an assignment of earnings from the lessee for payment or as security for payment of a charge arising out of a rental purchase agreement. An assignment of earnings in violation of this paragraph (a) is unenforceable by the assignee of the earnings and revocable by the lessee. This paragraph (a) shall not prohibit a lessee from voluntarily authorizing deductions from his earnings if the authorization is revocable and otherwise permitted by law.

(b) Authorization to confess judgment. No lessor shall take or accept a power of attorney or other authorization from the lessee, or other person acting on his behalf, to confess judgment.

(c) Waivers. No lessor may require a lessee to waive service of process or to waive any defense, counterclaim, or right of action against the lessor, or a person acting on the lessor's behalf as the lessor's agent in collection of payments under the lease or in the repossession of the lease property.

(d) Breach of the peace. No lessor may require a lessee to authorize the lessor or a person acting on the lessor's behalf to enter unlawfully upon the lessee's premises or to commit any breach of the peace in the repossession of the lease property.

(e) Garnishment of wages. No lessor may require a lessee to authorize a prejudgment garnishment of the lessee's wages.

5-10-503. Balloon payments.

A lessee shall not be required to make a payment in addition to regular lease payments in order to acquire ownership of the lease property, nor shall the lessee be required to pay lease payments totaling more than the cost to acquire ownership, as provided in section 5-10-401 (1) (b).

5-10-504. Prohibited charges.

(1) A lessor shall not contract for or receive charges for any of the following:

(a) The purchase of insurance by the lessee from the lessor;

(b) A penalty for early termination of a rental purchase agreement or for the return of an item at any point, except for those charges authorized by sections 5-10-601 and 5-10-602; or

(c) A payment by a co-signer of the rental purchase agreement for any fees or charges which could not be imposed upon the lessee as part of the rental purchase agreement.

(2) No payment or obligation on the part of the lessee shall accrue when the property is being repaired or replaced unless a loaner is provided to the lessee.

PART 6

LIMITATIONS ON CHARGES

5-10-601. Additional charges.

(1) A lessor may contract for and receive an initial nonrefundable fee not to exceed ten dollars per contract. Should any security deposit be required by the lessor, the amount of such deposit and the conditions under which it will be returned shall be disclosed with the disclosures required by section 5-10-401.

(2) A lessor may contract for and receive an initial delivery charge per contract not to exceed fifteen dollars in the case of a rental purchase agreement covering five or fewer items and a delivery charge not to exceed forty-five dollars in the case of a rental purchase agreement covering more than five items, if, in either case, the lessor actually delivers the items to the lessee's dwelling and the delivery charge is disclosed with the disclosures required by section 5-10-401. Said delivery charge shall be assessed in lieu of and not in addition to the initial charge in subsection (1) of this section. A lessor may not contract for or receive a delivery charge on property redelivered after repair or maintenance.

(3) A lessor may contract for and receive a charge for picking up late payments from the lessee if the lessor is required to do so pursuant to the rental purchase agreement or is requested to visit the lessee to pick up a payment. In a rental purchase agreement with payment or renewal dates which are on a monthly basis, this charge may not be assessed more than three times in any six-month period. In rental purchase agreements with payments or renewal options on a weekly or biweekly basis, this charge may not be assessed more than six times in any six-month period. No charge assessed pursuant to this subsection (3) may exceed ten dollars. A pickup fee may be assessed pursuant to this subsection (3) only in lieu of and not in addition to any late charge assessed pursuant to subsection (4) of this section.

(4) (a) The parties may contract for late charges as follows:

(I) For rental purchase agreements with monthly renewal dates, a late charge not exceeding five dollars may be assessed on any payment not made within five days after payment is due, or return of the property is required.

(II) For rental purchase agreements with weekly or bi-weekly renewal dates, a late charge not exceeding three dollars may be assessed on any payments not made within three days after payment is due, or return of the property is required.

(b) A late charge on a rental purchase agreement may be collected only once on any accrued payment, no matter how long it remains unpaid. A late charge may be collected

at the time it accrues or at any time thereafter. A lessor may elect to waive imposition of a late charge due on an accrued payment in accordance with the terms of the rental purchase agreement; except that, such waiver shall be in writing and, once a late charge is waived for a specific payment, the lessor may not thereafter seek to impose a late fee for the accrued payment in question. No late charge may be assessed against a payment that is timely made, even though an earlier late charge has not been paid in full.

5-10-602. Reinstatement fees.

A reinstatement fee as provided for in section 5-10-701 shall equal the outstanding balance of any accrued missed payments and late charges plus an additional fee not to exceed five dollars.

5-10-603. Liability damage waivers - fees.

(1) In addition to the other charges permitted by this part 6, the parties may contract for a liability waiver fee not to exceed the greater of ten percent of any periodic lease payment due or two dollars in the case of any rental purchase agreement with weekly or biweekly renewal dates, and not to exceed the greater of ten percent of any periodic lease payment due or five dollars in the case of any rental purchase agreement with monthly renewal dates. The selling or offering for sale of a liability damage waiver pursuant to this article is subject to the following prohibitions and requirements:

(a) A lessor may not sell or offer to sell a liability damage waiver unless all restrictions, conditions, and exclusions are printed in the rental purchase agreement, or in a separate agreement, in eight-point type, or larger, or written in pen and ink or typewritten in or on the face of the rental purchase agreement in a blank space provided therefor. The liability damage waiver may exclude only loss or damage to the property which is the subject of the rental purchase agreement due to moisture, scratches, mysterious disappearance, vandalism, abandonment of the property, or due to any other damages caused intentionally by the lessee or which result from the lessee's willful or wanton misconduct.

(b) The liability damage waiver agreement must include a statement of the total charge for the liability damage waiver. The liability damage waiver agreement must display in eight-point boldface type the following notice:

> NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE LIABILITY DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN HOMEOWNERS OR CASUALTY INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL PROPERTY, AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS LIABILITY DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED.

(c) The restrictions, conditions, and exclusions of the liability damage waiver must be disclosed on a separate agreement, sheet, or handout given to the lessee prior to entering

into the rental purchase agreement. The separate contract, sheet, or handout must be signed, or otherwise acknowledged by the lessee as being received prior to entering into the rental purchase agreement.

5-10-604. Taxes.

In addition to those charges allowable by this part 6, the lessor may require the lessee to pay all applicable state sales and use taxes levied in connection with the rental purchase agreement.

PART 7

REMEDIES

5-10-701. Lessee's remedies - reinstatement.

(1) A lessee who breaches any rental purchase agreement, including but not limited to the failure to make timely rental payments, has the right to reinstate the original rental purchase agreement without losing any rights or options previously acquired under the rental purchase agreement if both of the following apply:

(a) Subsequent to having failed to make a timely rental payment, the lessee has promptly surrendered the property to the lessor, in the manner as set forth in the rental purchase agreement, and if and when requested by lessor; and

(b) Not more than sixty days have passed since the lessee returned the lease property; except that if the lessee has made more than sixty percent of the total number of payments required under the rental purchase agreement to acquire ownership, such sixty-day period shall be extended to a one-hundred-twenty-day period.

(2) As a condition precedent to reinstatement of the rental purchase agreement, a lessor may collect a reinstatement fee as set forth in section 5-10-602, plus delivery charges allowable by section 5-10-601 (2) if redelivery of the item is necessary.

(3) If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with either the same item leased by the lessee prior to reinstatement or a substitute item of equivalent quality and condition. If a substitute item is provided, the lessor shall provide the lessee with all the information required by section 5-10-401.

5-10-702. Limitations on lessor's remedies.

With respect to a debt arising from a rental purchase agreement, regardless of where made, the lessor may not attach unpaid earnings of the debtor by garnishment or like proceedings prior to the entry of judgment in an action against the lessee arising from the said rental purchase agreement.

5-10-703. Assignee liability.

(1) With respect to a rental purchase agreement, an assignee of the rights of the lessor is subject to all claims and defenses of the lessee against the lessor arising from the lease of property or services, notwithstanding that the assignee is the holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments.

(2) A claim or defense of a lessee specified in subsection (1) of this section may be asserted against the assignee under this section only to the extent of the amount owing and paid to the assignee and assignor.

(3) An agreement may not limit or waive the claims or defenses of a lessee under this section.

5-10-704. Notice of assignment.

The lessee is authorized to pay the original lessor until the lessee receives written notification that the rights to payment pursuant to a rental purchase agreement have been assigned to an assignee and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned shall be ineffective. If requested by the lessee, the assignee shall furnish reasonable proof that the assignment has been made, and, unless he does so, the lessee may pay the lessor.

PART 8

ENFORCEMENT

5-10-801. Administrator responsibility.

(1) The administrator shall enforce this article. To carry out this responsibility, the administrator shall be authorized to:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the administrator's own initiative;

(b) Issue and enforce cease and desist or other administrative enforcement orders in the same manner as set forth in section 5-6-109;

(c) Counsel persons and groups on their rights and duties under this article;

(d) Establish programs for the education of consumers with respect to rental purchase agreement practices and problems;

(e) Bring a civil action to restrain a person from violating this article and for other appropriate relief in the same manner as set forth in sections 5-6-111 to 5-6-114 and for a civil penalty of up to one thousand dollars per violation; and

(f) Use any of his enforcement powers to restrain or take other action against any person found to be making or enforcing rental purchase agreements which contain any unconscionable provisions or clauses.

5-10-802. Lessor's records and investigations.

(1) In administering this article and in order to determine compliance with this article, the administrator may examine the books and records of persons subject to the article and may make investigations of persons necessary to determine compliance. For this purpose, the administrator may administer oaths or affirmations, and, upon the administrator's own motion or upon request of any party, may subpoena witnesses,

compel their attendance, compel testimony, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of, any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. If the administrator prevails in any civil action brought as a result of such an investigation, the court shall award the administrator costs and a reasonable attorney fee.

(2) If the person's records are located outside Colorado, the person shall, at the person's option, either make them available to the administrator at a convenient location in Colorado, or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

(3) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to a court for an order compelling compliance.

(4) The administrator may not make public the name or identity of a person whose acts or conduct the administrator investigates under this section or the facts disclosed in the investigation, but this subsection (4) shall not apply to disclosures in actions or enforcement proceedings under this article.

5-10-803. Assurance of discontinuance.

If it is claimed that a person has engaged in conduct subject to an order by the administrator or by a court under this article, the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance shall be evidence that before the assurance the person engaged in the conduct described in the assurance.

5-10-804. Notification by lessors - contents.

(1) A lessor shall file a notification as prescribed in subsection (2) of this section with the administrator:

(a) Within thirty days after soliciting or entering into a rental purchase agreement subject to this article; and

(b) Before February 1 in each subsequent year that the lessor solicits or enters into a rental purchase agreement subject to this article.

(2) The notification required under subsection (1) of this section shall state the following:

(a) The name of the lessor and, if different, the name in which business is transacted;

(b) The address of the lessor's principal office, which may be outside Colorado;

(c) The address of all offices or stores, if any, in Colorado at which rental purchase agreements are made;

(d) If rental purchase agreements are made in a place other than an office or store in Colorado, a brief description of the place and manner in which they are made; and

(e) The address of the registered agent upon whom service of process may be made in Colorado.

(3) If information in a notification becomes inaccurate after filing, no further notification is required until the lessor is required to file a subsequent notification pursuant to subsection (1) of this section.

5-10-805. Fees.

(1) A lessor required to file a notification with the administrator under section 5-10-804 shall pay to the administrator the following fees:

(a) Fifty dollars for each address listed in section 5-10-804 (2) (c) paid at the time of the filing of the initial notification with the administrator;

(b) Twenty-five dollars for each address listed in section 5-10-804 (2) (c) paid at the time of the filing of each annual notification subsequently filed with the administrator.

(2) In addition to the fees required under subsection (1) of this section, if the administrator examines the books and records of the lessor, the lessor shall pay to the administrator a fee of two hundred dollars for each day required for the administrator or the administrator's representative to conduct the examination. However, the sum of all fees collected from a lessor under this subsection (2) may not exceed one thousand dollars in any calendar year.

(3) Notwithstanding the amount specified for any fee in this section, the administrator by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the administrator by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

PART 9

VIOLATIONS AND PENALTIES

5-10-901. Unlawful acts - fines - deceptive trade practice.

(1) Any person who willfully and intentionally violates any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars.

(2) Any intentional violation of the provisions of this article shall constitute a deceptive trade practice and shall be subject to the provisions of article 1 of title 6, C.R.S.

5-10-902. Remedies of lessee.

(1) In case of a violation by a lessor of any provision of this article with respect to any rental purchase agreement, the lessee in such agreement may bring a suit in any court of competent jurisdiction to recover from such lessor or may set off or counterclaim in any action by such lessor actual damages. If the court finds that any such violation has occurred, it shall award a minimum recovery of two hundred fifty dollars or twenty-five percent of the total cost to acquire ownership under the rental purchase agreement, whichever is greater.

(2) The remedies specified in subsection (1) of this section are in addition to, and not in limitation of, any other remedies provided by law.

(3) In any action brought pursuant to this section, the court shall award the prevailing party the costs of the action and a reasonable attorney fee.

5-10-903. Unconscionability.

(1) With respect to a rental purchase transaction, if the court as a matter of law finds the transaction, the agreement, or any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the transaction, the agreement, or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making any such determination related to unconscionability.

(3) If, in an action in which unconscionability is claimed, the court finds unconscionability pursuant to this section, the court may award the costs of the action and a reasonable attorney fee to the lessee. If the court does not find unconscionability and does find that the lessee claiming unconscionability brought or maintained an action he knew to be groundless, the court may award the costs of the action and a reasonable attorney fee to the party against whom the claim was made. In determining such attorney fee, the amount of recovery claimed on behalf of the lessee shall not be controlling.

(4) The remedies of this section are in addition to remedies otherwise available for the same conduct authorized under law other than in this article, but double recovery of actual damages may not be had.

(5) For the purpose of this section, a charge or practice expressly permitted by this article is not in itself unconscionable.

5-10-904. Effect of correction.

Notwithstanding sections 5-10-801 and 5-10-902, any failure to comply with any provisions of this article resulting from a bona fide or clerical error may be corrected by

the lessor within sixty days after discovering an error and prior to the institution of any action under this article, or within sixty days of the receipt of written notice of the error after the date of execution of the rental purchase agreement by the lessee. If so corrected, neither the lessor nor any holder is subject to penalty under this section. A copy of any rental purchase agreement to which such a correction is made shall be promptly sent to the lessee.

5-10-905. Statute of limitations.

No action shall be brought by a lessee under this article more than three years after the lessee knew or should have known of the occurrence of the alleged violation. This section does not bar a person from asserting a violation of this article in any action to collect the debt which was brought more than three years from the date of the occurrence of the violation as a matter of defense by recoupment or setoff in such action.

PART 10

ADVERTISING

5-10-1001. Advertising.

(1) An advertisement for a rental purchase agreement shall not state or imply that a specific item is available at specific amounts or terms unless the lessor usually and customarily offers or will offer that item at those amounts or terms.

(2) If any advertisement for a rental purchase agreement refers to or states the amount of any payment or the right to acquire ownership for a specific item, the advertisement must also clearly and conspicuously state the following terms as applicable:

(a) That the transaction is a rental purchase agreement or rent-to-own agreement;

(b) The total number of payments and amount of such payments necessary to acquire ownership; and

(c) That the lessee will not own the property until the total of such payments is paid in full or is paid by prepayment.

(3) Advertising which complies with the "Federal Consumer Credit Protection Act" does not violate this section.

(4) With the exception of the lessor, this section imposes no liability on the owner or personnel of any medium in which an advertisement appears or through which it is disseminated.

ARTICLE 12
INTEREST - GENERAL PROVISIONS

5-12-101. Legal rate of interest.

If there is no agreement or provision of law for a different rate, the interest on money shall be at the rate of eight percent per annum, compounded annually.

5-12-102. Statutory interest.

(1) Except as provided in section 13-21-101, C.R.S., when there is no agreement as to the rate thereof, creditors shall receive interest as follows:

(a) When money or property has been wrongfully withheld, interest shall be an amount which fully recognizes the gain or benefit realized by the person withholding such money or property from the date of wrongful withholding to the date of payment or to the date judgment is entered, whichever first occurs; or, at the election of the claimant,

(b) Interest shall be at the rate of eight percent per annum compounded annually for all moneys or the value of all property after they are wrongfully withheld or after they become due to the date of payment or to the date judgment is entered, whichever first occurs.

(2) When there is no agreement as to the rate thereof, creditors shall be allowed to receive interest at the rate of eight percent per annum compounded annually for all moneys after they become due on any bill, bond, promissory note, or other instrument of writing, or money due on mutual settlement of accounts from the date of such settlement and on money due on account from the date when the same became due.

(3) Interest shall be allowed as provided in subsection (1) of this section even if the amount is unliquidated at the time of wrongful withholding or at the time when due.

(4) Except as provided in section 5-12-106, creditors shall be allowed to receive interest on any judgment recovered before any court authorized to enter the same within this state from the date of entering said judgment until satisfaction thereof is made either:

(a) At the rate specified in a contract or instrument in writing which provides for payment of interest at a specified rate until the obligation is paid; except that if the contract or instrument provides for a variable rate, at the rate in effect under the contract or instrument on the date judgment enters; or

(b) In all other cases where no rate is specified, at the rate of eight percent per annum compounded annually.

5-12-103. Greater rate may be stipulated.

(1) The parties to any bond, bill, promissory note, or other instrument of writing may stipulate therein for the payment of a greater or higher rate of interest than eight percent

per annum, but not exceeding forty-five percent per annum, and any such stipulation may be enforced in any court of competent jurisdiction in the state, except as otherwise provided in articles 1 to 6 of this title. The rate of interest shall be deemed to be excessive of the limit under this section only if it could have been determined at the time of the stipulation by mathematical computation that such rate would exceed an annual rate of forty-five percent when the rate of interest was calculated on the unpaid balances of the debt on the assumption that the debt is to be paid according to its terms and will not be paid before the end of the agreed term.

(2) The term "interest" as used in this section means the sum of all charges payable directly or indirectly by a debtor and imposed directly or indirectly by a lender as an incident to or as a condition of the extension of credit to the debtor, whether paid or payable by the debtor, the lender, or any other person on behalf of the debtor to the lender or to a third party.

(3) The public policy of this state does not limit or prohibit contracting, agreeing, or stipulating in advance for the payment of interest on interest or compound interest.

(4) No law or public policy of this state limiting interest on interest, the adding of deferred interest to principal, or the compounding of interest shall apply to any promissory note secured by any mortgage or deed of trust or to one secured by a mortgage or deed of trust where periodic disbursement of part of the loan proceeds is made by a lender over a period of time as established by the mortgage or deed of trust, or over an expressed period of time, or ending with the death of the debtor, including, but not limited to, promissory notes secured by mortgages or deeds of trust having provisions for adding deferred interest to principal or otherwise providing for the charging of interest on interest.

(5) This section shall not apply to a commercial credit plan as defined in section 5-12-107 (8) and extensions of credit made pursuant thereto, unless the bond, bill, promissory note, instrument, or other written agreement evidencing the plan expressly states that it is subject to this section.

5-12-104. Warrants to bear six percent.

County orders and warrants, town and city and school orders and warrants, and other like evidences or certificates of municipal indebtedness, shall bear interest at the rate of six percent per annum from the date of the presentation thereof for payment at the treasury where the same may be payable, until there is money in the treasury for the payment thereof, except when otherwise specially provided by law. Every county treasurer, town treasurer, and city treasurer to whom any such county, town, city, or school order or warrant is presented for payment, and who shall not have on hand the funds to pay the same, shall endorse thereon the rate of interest said order or warrant will draw, and the date of such presentation, and subscribe such endorsement with his official signature; however, all such orders and warrants may be made to bear a lower rate of interest than above specified, by special agreement between such counties, towns, and cities issuing the same, and the person to whom such orders or warrants are issued.

5-12-105. Interest upon foreclosure.

In all cases where real estate shall be sold under execution or by virtue of the foreclosure of any mortgage, deed of trust, or other lien, the indebtedness and costs for which any certificate of purchase may issue shall bear interest at the rate specified in the original instrument.

5-12-106. Rate of interest on judgments which are appealed.

(1) Except as provided in section 13-21-101, C.R.S., where there is no written agreement as to the rate of interest, creditors shall receive interest as follows:

(a) If a judgment for money in a civil case is appealed by a judgment debtor and the judgment is affirmed, interest, as set out in subsections (2) and (3) of this section, shall be payable from the date of entry of judgment in the trial court until satisfaction of the judgment and shall include compounding of interest annually.

(b) If a judgment for money in a civil case is appealed by a judgment debtor and the judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, interest, as set out in subsections (2) and (3) of this section, shall be payable from the date a judgment was first entered in the trial court until the judgment is satisfied and shall include compounding of interest annually. This interest shall be payable on the amount of the final judgment.

(2) (a) The rate of interest shall be certified on each January 1 by the secretary of state to be two percentage points above the discount rate, which discount rate shall be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible paper as security, and shall be rounded to the nearest full percent. Such annual rate of interest shall be so established as of December 31, 1982, to become effective January 1, 1983. Thereafter, as of December 31 of each year, the annual rate of interest shall be established in the same manner, to become effective on January 1 of the following year.

(b) Notwithstanding any other provision of this subsection (2), the rate of interest shall be no lower than the percentage authorized in section 5-12-102 (4) (b).

(3) The rate at which interest shall accrue during each year shall be the rate which the secretary of state has certified as the annual interest rate under subsection (2) of this section.

5-12-107. Commercial credit plans - definitions.

(1) Any creditor may offer and extend credit to the debtor under a commercial credit plan. Without limitation, credit may be extended under a commercial credit plan by the creditor's acquisition of obligations including, without limitation, obligations arising out of the honoring by a seller or another person of a credit device made available to the debtor under a commercial credit plan. A creditor may take such security in connection with a commercial credit plan as may be acceptable to the creditor and may, if the agreement governing the commercial credit plan allows, establish separate accounts for

different types of purchases or loans, or both, and impose different terms for credit extended with respect to each account.

(2) (a) A creditor may charge and collect periodic interest under a commercial credit plan on the outstanding unpaid indebtedness at a periodic percentage rate or rates not exceeding forty-five percent per annum. If the applicable periodic percentage rate under the agreement governing the plan is other than daily, periodic interest may be calculated on an amount not in excess of the average outstanding unpaid indebtedness for the applicable billing period. If the applicable periodic percentage rate under the agreement governing the plan is daily, periodic interest may be calculated for each day in the billing period on an amount not in excess of either:

(I) The outstanding unpaid indebtedness on that day; or

(II) The average outstanding unpaid indebtedness for the applicable billing period. If the applicable periodic percentage rate under the agreement governing the plan is monthly, a billing period shall be deemed to be a month or monthly if the last day of each billing period is on the same day of each month or does not vary by more than four days therefrom.

(b) The rate limitation established by this subsection (2) for periodic interest shall not apply to the additional interest charges authorized by subsection (3) of this section regardless of whether such additional interest charges are imposed in addition to or in lieu of periodic interest.

(3) (a) In addition to or in lieu of interest at a periodic rate or rates, a creditor may, if the agreement governing the commercial credit plan so provides, either initially or pursuant to a change in the terms of the agreement made in the manner prescribed by subsection (5) of this section, charge and collect, in such manner, form, percentages, or amounts as the agreement governing the plan may provide, one or more of the following fees or charges:

(I) A fee for participation in the commercial credit plan, whether assessed on an annual or other periodic basis;

(II) A transaction charge for each separate purchase or loan under the plan;

(III) An automated teller machine charge or similar electronic or interchange fee or charge;

(IV) A minimum charge for each scheduled billing period under the commercial credit plan during any portion of which there is an outstanding unpaid indebtedness;

(V) A late payment charge for each required payment not made on or before its scheduled due date;

(VI) Fees for services rendered or for reimbursement of expenses incurred by the creditor or other persons in connection with the commercial credit plan, or other fees

incidental to the application, opening, administration, maintenance, or termination of a commercial credit plan;

(VII) Returned payment charges;

(VIII) Documentary evidence charges including without limitation charges for furnishing copies of sales slips, invoices, monthly statements, or other documents; and

(IX) Any similar fees or charges provided for in the agreement governing the commercial credit plan, whether initially or pursuant to a change in the terms of the agreement made in the manner prescribed by subsection (5) of this section; except that in no event shall this authorization to charge and collect any similar fees or charges be construed to authorize the imposition of periodic interest on the outstanding unpaid indebtedness in addition to the periodic interest authorized by subsection (2) of this section.

(b) Notwithstanding the fact that they are not subject to the rate limitation established by subsection (2) of this section for periodic interest, all of the fees and charges permitted by this subsection (3) are interest.

(4) The agreement governing a commercial credit plan may provide for the payment by the debtor of reasonable attorney's fees of the creditor if the account of the debtor is referred for collection to an attorney not a salaried employee of the creditor. The agreement also may provide for the payment by the debtor of all court and other collection costs actually incurred by the debtor.

(5) (a) Upon written notice furnished at least fifteen days prior to the effective date of the change, a creditor may change the terms of the agreement governing the commercial credit plan including, without limitation, periodic interest and additional interest charges so long as the debtor does not, prior to the effective date of the change set forth in the notice, furnish written notice to the creditor that the debtor does not agree to abide by the change. The change may be made effective with respect to existing balances if so provided in the written notice.

(b) Upon receipt by the creditor of a timely written notice stating that the debtor does not agree to abide by the change, the debtor shall have the remainder of the time under the existing terms in which to pay all sums owed to the creditor as of the effective date of the change set forth in the notice. If there is an authorized charge to the account on or after the effective date of the change set forth in the notice, the debtor shall be deemed to have accepted the new terms even if the debtor previously submitted to the creditor a timely written notice stating that the debtor does not agree to abide by the change.

(6) All terms, conditions, and other provisions of and relating to a commercial credit plan as contained in this section or in the agreement governing such plan, other than those fees and charges that are interest under this section, shall be and hereby are deemed to be material to the determination of interest applicable to a commercial credit plan under Colorado law, under the most favored lender doctrine, and under the "National Bank Act", 12 U.S.C. sec. 85 or section 521, 522, or 523 of the "Depository Institutions

Deregulation and Monetary Control Act of 1980", 12 U.S.C. secs. 1463 (g), 1785 (g), and 1831d.

(7) A commercial credit plan established by a creditor and the extensions of credit made pursuant thereto shall be governed by Colorado law. Unless the agreement governing the commercial credit plan expressly states that it is subject to another law of this state, a commercial credit plan shall be governed exclusively by this section and shall not be subject to any other law of this state that otherwise would apply to the commercial credit plan including, but not limited to, laws limiting the amount or duration of credit or the rate or amount of interest or other charges that may be charged, taken, collected, received, or reserved.

(8) As used in this section:

(a) "Average outstanding unpaid indebtedness" means the amount determined by dividing the total of the amounts of the outstanding unpaid indebtedness for each day in the applicable billing period by the number of days in the billing period.

(b) "Commercial credit plan" or "plan" means a plan contemplating the extension of credit pursuant to an account governed by an agreement between a creditor and a debtor, whether or not providing for a security interest, pursuant to which:

(I) A creditor permits the debtor and, if allowed by a creditor, persons acting on behalf of or with authorization from the debtor, from time to time to make purchases on credit or obtain loans, or both, whether or not by use of a credit device;

(II) The purchases on credit are made or the loans are obtained primarily for business, commercial, investment, or agricultural purposes;

(III) The indebtedness of the debtor arising from such purchases or loans, or both, and other charges provided for in this section are debited to the account; and

(IV) (A) The debtor undertakes an obligation to pay the outstanding unpaid indebtedness at one time; or

(B) The debtor has the privilege of paying the outstanding unpaid indebtedness in one or more installments.

(c) "Credit" means the right granted by a creditor to the debtor to defer payment of debt or to incur debt and defer its payment.

(d) "Credit device" means any card, check, identification code, account number, or other means of identification contemplated by the agreement governing the plan.

(e) "Creditor" means any seller or any lender located or maintaining a place of business in this state that enters into a commercial credit plan agreement with a debtor wherever located, including, without limitation, sellers of goods or services, small loan companies, licensed lenders, industrial banks, commercial banks and trust companies,

savings and loan associations, and savings banks. The term "creditor" includes any transferee, whether such transferee acquires its interest by assignment or otherwise.

(f) "Debtor" means any natural person or individual or any corporation, partnership, cooperative, association, government or governmental subdivision or agency, trust, estate, or other entity.

(g) "Interest" includes both periodic interest authorized by subsection (2) of this section and additional interest charges authorized by subsection (3) of this section.

(h) "Loans" means cash advances or loans to be paid to or for the account of the debtor.

(i) "Outstanding unpaid indebtedness" means on any day an amount not in excess of the total amount of purchases, loans, and other debits charged to the debtor's account under the plan that is outstanding and unpaid at the end of the day, after adding the aggregate amount of any new purchases, loans, and other debits charged to the account as of that day, including, without limitation, the amount of any periodic interest, additional interest charges, and other charges permitted by this section that have accrued, or been charged, to the account as of that day, and deducting the aggregate amount of any payments and other credits applied to that indebtedness as of that day.

(j) "Purchases" means payment obligations for property of whatever nature, real or personal, tangible or intangible, and payment obligations for services including, without limitation, insurance, licenses, taxes, official fees, fines, private or governmental obligations, or any other thing of value.

ARTICLE 13
FEDERAL PREEMPTION OF USURY LAWS - STATE OVERRIDE

5-13-101. Mortgages.

In accordance with section 501 (b) (2) of Public Law 96-221, it is declared that the state of Colorado does not want the provisions of subsection 501 (a) (1) of Public Law 96-221 removing the limits on the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved with respect to loans, mortgages, credit sales, and advances made to apply in this state. The rates established in articles 1 to 9 of this title shall control consumer credit transactions in the state of Colorado.

5-13-102. Business and agricultural loans.

In accordance with section 512 of Public Law 96-221, it is declared that the state of Colorado does not want the provisions of section 511 of Public Law 96-221 setting interest rates and preempting state interest rates on business and agricultural loans to apply in this state. The rates established in articles 1 to 9 of this title shall control consumer credit transactions in the state of Colorado.

5-13-103. Small business loans.

In accordance with section 524 of Public Law 96-221, it is declared that the state of Colorado does not want the amendments to the "Small Business Investment Act" made by section 524 of Public Law 96-221 prescribing interest rates for small business loans to apply in this state. The rates established in articles 1 to 9 of this title shall control consumer credit transactions in the state of Colorado.

5-13-104. Other loans. (Repealed)

5-13-105. General override. (Repealed)

COLORADO FAIR DEBT COLLECTION PRACTICES ACT

12-14-101. Short title.

This article shall be known and may be cited as the "Colorado Fair Debt Collection Practices Act".

12-14-102. Scope of article.

(1) This article shall apply to any collection agency, solicitor, or debt collector that has a place of business located:

(a) Within this state;

(b) Outside this state and collects or attempts to collect from consumers who reside within this state for a creditor with a place of business located within this state;

(c) Outside this state and regularly collects or attempts to collect from consumers who reside within this state for a creditor with a place of business located outside this state; or

(d) Outside this state and solicits or attempts to solicit debts for collection from a creditor with a place of business located within this state.

(2) (Deleted by amendment, L. 95, p. 1224, 1, effective July 1, 1995.)

12-14-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Administrator" means the administrator of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S., whose office is created in the department of law in section 5-6-103, C.R.S.

(1.5) "Board" means the collection agency board created in section 12-14-116.

(2) (a) "Collection agency" means any:

(I) Person who engages in a business the principal purpose of which is the collection of debts; or

(II) Person who:

(A) Regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another;

(B) Takes assignment of debts for collection purposes;

(C) Directly or indirectly solicits for collection debts owed or due or asserted to be owed or due another;

(D) Collects debt for the department of personnel, but only for the purposes specified in paragraph (d) of this subsection (2);

(b) "Collection agency" does not include:

(I) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(II) Any person while acting as a collection agency for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a collection agency does so only for creditors to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(III) Any officer or employee of the United States or any state to the extent that collecting or attempting to collect any debt is in the performance of such officer's or employee's official duties, except as otherwise provided in subsection (7) of this section;

(IV) Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(V) Any debt-management services provider operating in compliance with or exempt from the “Uniform Debt-Management Services Act”, part 2 of article 14.5 of title 12, C.R.S.;

(VI) Repealed.

(VII) Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent that:

(A) Such activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(B) Such activity concerns a debt which was extended by such person;

(C) Such activity concerns a debt which was not in default at the time it was obtained by such person; or

(D) Such activity concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor;

(VIII) Any person whose principal business is the making of loans or the servicing of debt not in default and who acts as a loan correspondent, or seller and servicer for the owner, or holder of a debt which is secured by a deed of trust on real property whether or not such debt is also secured by an interest in personal property;

(IX) A limited gaming or racing licensee acting pursuant to part 6 of article 35 of title 24, C.R.S.

(c) Notwithstanding the provisions of subparagraph (VII) of paragraph (b) of this subsection (2), "collection agency" includes any person who, in the process of collecting

his or her own debts, uses another name which would indicate that a third person is collecting or attempting to collect such debts.

(d) For the purposes of section 12-14-108 (1) (f), "collection agency" includes any person engaged in any business the principal purpose of which is the enforcement of security interests. For purposes of sections 12-14-104, 12-14-105, 12-14-106, 12-14-107, 12-14-108, and 12-14-109 only, "collection agency" includes a debt collector for the department of personnel.

(e) Notwithstanding paragraph (b) of this subsection (2), "collection agency" includes any person who engages in any of the following activities; except that such person shall be exempt from provisions of this article that concern licensing and licensees:

(I) (Deleted by amendment, L. 2000, p. 935, 2, effective July 1, 2000.)

(II) Is an attorney-at-law and regularly engages in the collection or attempted collection of debts in this state;

(III) Is a person located outside this state whose collection activities are limited to collecting debts not incurred in this state from consumers located in this state and whose collection activities are conducted by means of interstate communications, including telephone, mail, or facsimile transmission, and who is located in another state that regulates and licenses collection agencies but does not require Colorado collection agencies to obtain a license to collect debts in their state if such agencies' collection activities are limited in the same manner.

(3) "Communication" means conveying information regarding a debt in written or oral form, directly or indirectly, to any person through any medium.

(4) "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4.5) (a) "Consumer reporting agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(b) "Consumer reporting agency" shall not include any business entity that provides check verification or check guarantee services only.

(c) "Consumer reporting agency" shall include any persons defined in 15 U.S.C. sec. 1681a (f) or section 12-14.3-102 (4).

(5) "Creditor" means any person who offers or extends credit creating a debt or to which a debt is owed, but such term does not include any person to the extent such person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(6) (a) "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.

(b) "Debt" does not include a debt for business, investment, commercial, or agricultural purposes or a debt incurred by a business.

(7) "Debt collector" means any person employed or engaged by a collection agency to perform the collection of debts owed or due or asserted to be owed or due to another, and includes any person employed by the department of personnel, or any division of said department, when collecting debts due to the state on behalf of another state agency.

(8) (Deleted by amendment, L. 2000, p. 935, 2, effective July 1, 2000.)

(9) "Location information" means a consumer's place of abode and his telephone number at such place or his place of employment.

(9.3) "Person" means a natural person, firm, corporation, limited liability company, or partnership.

(9.5) "Principal" means any individual having a position of responsibility in a collection agency, including but not limited to any manager, director, officer, partner, owner, or shareholder owning ten percent or more of the stock.

(10) "Solicitor" means any person employed or engaged by a collection agency who solicits or attempts to solicit debts for collection by such person or any other person.

(11) "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of them.

12-14-104. Location information - acquisition.

(1) Any debt collector or collection agency communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

(a) Identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(b) Not state that such consumer owes any debt;

(c) Not communicate with any such person more than once unless requested to do so by such person or unless the debt collector or collection agency reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(d) Not communicate by postcard;

(e) Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debtor collector or collection agency is in the debt collection business or that the communication relates to the collection of a debt; and

(f) After the debt collector or collection agency knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time, not less than thirty days, to communication from the debt collector or collection agency.

12-14-105. Communication in connection with debt collection.

(1) Without the prior consent of the consumer given directly to the debt collector or collection agency or the express permission of a court of competent jurisdiction, a debt collector or collection agency shall not communicate with a consumer in connection with the collection of any debt:

(a) At any unusual time, place, or manner known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector or collection agency shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m. local time at the consumer's location.

(b) If the debt collector or collection agency knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or collection agency or unless the attorney consents to direct communication with the consumer; or

(c) At the consumer's place of employment if the debt collector or collection agency knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(2) Except as provided in section 12-14-104, without the prior consent of the consumer given directly to the debt collector or collection agency or the express permission of a court of competent jurisdiction or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector or collection agency shall not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the collection agency.

(3) (a) If a consumer notifies a debt collector or collection agency in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector or collection agency to cease further communication with the consumer, the debt collector or collection agency shall not communicate further with the consumer with respect to such debt, except to:

(I) Advise the consumer that the debt collector's or collection agency's further efforts are being terminated;

(II) Notify the consumer that the collection agency or creditor may invoke specified remedies that are ordinarily invoked by such collection agency or creditor; or

(III) Notify the consumer that the collection agency or creditor intends to invoke a specified remedy.

(b) If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(c) In its initial written communication to a consumer, a collection agency shall include the following statement: "FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CADC/CADCMAIN.CFM." If the web site address is changed, the notification shall be corrected to contain the correct address. If the notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact.

(d) (Deleted by amendment, L. 2003, p. 1865, 2, effective May 21, 2003.)

(e) In its initial written communication to a consumer, a collection agency shall include the following statement: "A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt." If the notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact.

(4) For the purpose of this section, "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

(5) It shall be an affirmative defense to any action based upon failure of a debt collector or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

12-14-106. Harassment or abuse.

(1) A debt collector or collection agency shall not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt, including, but not limited to, the following conduct:

(a) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(b) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(c) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of 15 U.S.C. sec. 1681b (a) (3) and section 12-14.3-103 (1) (c);

(d) The advertisement for sale of any debt to coerce payment of the debt or agreeing to do so for the purpose of solicitation of claims;

(e) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(f) Except as provided in section 12-14-104, the placement of telephone calls without meaningful disclosure of the caller's identity within the first sixty seconds after the other party to the call is identified as the debtor.

12-14-107. False or misleading representations.

(1) A debt collector or collection agency shall not use any false, deceptive, or misleading representation or means in connection with the collection of any debt, including, but not limited to, the following conduct:

(a) The false representation or implication that the debt collector or collection agency is vouched for, bonded by, or affiliated with the United States government or any state government, including the use of any misleading name, badge, uniform, or facsimile thereof;

(b) The false representation of:

(I) The character, amount, or legal status of any debt; or

(II) Any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt;

(c) The false representation or implication that any individual is an attorney or that any communication is from an attorney;

(d) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or in the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector, collection agency, or creditor intends to take such action;

(e) The threat to take any action that cannot legally be taken or that is not intended to be taken;

(f) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(I) Lose any claim or defense to payment of the debt; or

(II) Become subject to any practice prohibited by this article;

(g) The false representation or implication that the consumer committed any crime;

(h) The false representation or implication that the consumer has engaged in any disgraceful conduct;

(i) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed;

(j) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state or which creates a false or misleading impression as to its source, authorization, or approval;

(k) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(l) Except as otherwise provided for communications to acquire location information under section 12-14-104, the failure to disclose clearly, in the initial written communication made to collect a debt or obtain information about a consumer and also, if the initial communication with the consumer is oral, in the initial oral communication, that the debt collector or collection agency is attempting to collect a debt and that any information obtained will be used for that purpose, and, in subsequent communications, that the communication is from a debt collector or collection agency; except that this paragraph (l) shall not apply to a formal pleading made in connection with a legal action;

(m) The false representation or implication that accounts have been turned over to innocent purchasers for value;

(n) The false representation or implication that documents are legal process;

(o) The use of any business, company, or organization name other than the true name of the collection agency's business, company, or organization;

(p) The false representation or implication that documents are not legal process forms or do not require action by the consumer;

(q) The false representation or implication that a debt collector or collection agency operates or is employed by a consumer reporting agency.

12-14-108. Unfair practices.

(1) A debt collector or collection agency shall not use unfair or unconscionable means to collect or attempt to collect any debt, including, but not limited to, the following conduct:

(a) The collection of any amount, including any interest, fee, charge, or expense incidental to the principal obligation, unless such amount is expressly authorized by the agreement creating the debt or permitted by law;

(b) The acceptance by a debt collector or collection agency from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's or collection agency's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit;

(c) The solicitation by a debt collector or collection agency of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(d) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument;

(e) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(f) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(I) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(II) There is no present intention to take possession of the property; or

(III) The property is exempt by law from such dispossession or disablement;

(g) Communicating with a consumer regarding a debt by postcard;

(h) Using any language or symbol, other than the debt collector's or collection agency's address, on any envelope when communicating with a consumer by use of the mails or by telegram; except that a debt collector or collection agency may use his business name if such name does not indicate that he is in the debt collection business;

(i) Failing to comply with the provisions of section 13-21-109, C.R.S., regarding the collection of checks, drafts, or orders not paid upon presentment;

(j) Communicating credit information to a consumer reporting agency earlier than thirty days after the initial notice to the consumer has been mailed, unless the consumer's last-known address is known to be invalid. This paragraph (j) shall not apply to checks, negotiable instruments, or credit card drafts.

12-14-109. Validation of debts.

(1) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector or collection agency shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice with the disclosures specified in paragraphs (a) to (e) of this subsection (1). If such disclosures are placed on the back of the notice,

the front of the notice shall contain a statement notifying consumers of that fact. Such disclosures shall state:

(a) The amount of the debt;

(b) The name of the creditor to whom the debt is owed;

(c) That, unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector or collection agency;

(d) That, if the consumer notifies the debt collector or collection agency in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector or collection agency will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector or collection agency;

(e) That upon the consumer's written request within the thirty-day period, the debt collector or collection agency will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(f) and (g) (Deleted by amendment, L. 2003, p. 1866, 4, effective May 21, 2003.)

(2) If the consumer notifies the debt collector or collection agency in writing within the thirty-day period described in paragraph (c) of subsection (1) of this section that the debt, or any portion thereof, is disputed or that the consumer requests the name and address of the original creditor, the debt collector or collection agency shall cease collection of the debt, or any disputed portion thereof, until the debt collector or collection agency obtains verification of the debt or a copy of a judgment or the name and address of the original creditor and mails a copy of such verification or judgment or name and address of the original creditor to the consumer.

(3) The failure of a consumer to dispute the validity of a debt under this section shall not be construed by any court as an admission of liability by the consumer.

(4) It shall be an affirmative defense to any action based upon failure of a debt collector or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

12-14-110. Multiple debts.

If any consumer owes multiple debts and makes any single payment to any collection agency with respect to such debts, such collection agency shall not apply such payment to any debt which is disputed by the consumer and when so informed shall apply such payment in accordance with the consumer's directions.

12-14-111. Legal actions by collection agencies.

(1) Any debt collector or collection agency who brings any legal action on a debt against any consumer shall:

(a) In the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(b) In the case of an action not described in paragraph (a) of this subsection (1), bring such action only in the judicial district or similar legal entity in which:

(I) Such consumer signed the contract sued upon;

(II) Such consumer resides at the commencement of the action; or

(III) Such action may be brought pursuant to article 13 or 13.5 of title 26, C.R.S., section 14-14-104, C.R.S., or article 4 or 6 of title 19, C.R.S., if the action is by a private collection agency acting on behalf of a delegate child support enforcement unit.

12-14-112. Deceptive forms.

(1) It is unlawful for any person to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection or in the attempted collection of a debt that such consumer allegedly owes such creditor when in fact such person is not so participating.

(2) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector or collection agency under section 12-14-113 for failure to comply with this article.

(3) This section shall apply if the person supplying or using the forms or the consumer receiving the forms is located within this state.

12-14-113. Civil liability.

(1) In addition to administrative enforcement pursuant to section 12-14-114 and subject to section 12-14-134 and the limitations provided by subsection (9) of this section, and except as otherwise provided by this section, any debt collector or collection agency who fails to comply with any provision of this article or private child support collector, as defined in section 12-14.1-102 (9), who fails to comply with any provision of this article or article 14.1 of this title, with respect to a consumer is liable to such consumer in an amount equal to the sum of:

(a) Any actual damage sustained by such consumer as a result of such failure;

(b) (I) In the case of any action by an individual, such additional damages as the court may allow, but not to exceed one thousand dollars;

(II) In the case of a class action, such amount for each named plaintiff as could be recovered under subparagraph (I) of this paragraph (b) and such amount as the court may

allow for all other class members, without regard to a minimum individual recovery, not to exceed five hundred thousand dollars or one percent of the net worth of the debt collector or collection agency, whichever is the lesser; and

(c) In the case of any successful action to enforce such liability, the costs of the action, together with such reasonable attorney fees as may be determined by the court.

(1.5) In the case of any unsuccessful action brought under this section, the plaintiff shall be liable to each defendant in an amount equal to that defendant's cost incurred in defending the action, together with such reasonable attorney fees as may be determined by the court.

(2) In determining the amount of liability in any action under subsection (1) of this section, the court shall consider, among other relevant factors:

(a) In any individual action under subparagraph (I) of paragraph (b) of subsection (1) of this section, the frequency and persistence of noncompliance by the debt collector or collection agency, the nature of such noncompliance, and the extent to which such noncompliance was intentional;

(b) In any class action under subparagraph (II) of paragraph (b) of subsection (1) of this section, the frequency and persistence of noncompliance by the debt collector or collection agency, the nature of such noncompliance, the resources of the debt collector or collection agency, the number of persons adversely affected, and the extent to which the debt collector's or collection agency's noncompliance was intentional.

(3) A debt collector, private child support collector, as defined in section 12-14.1-102 (9), or collection agency may not be held liable in any action brought pursuant to the provisions of this article if the debt collector or collection agency shows by a preponderance of evidence that the violation was not intentional or grossly negligent and which violation resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(4) An action to enforce any liability created by the provisions of this article may be brought in any court of competent jurisdiction within one year from the date on which the violation occurs.

(5) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the administrator, notwithstanding that, after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(6) The policy of this state is not to award double damages under this article and the federal "Fair Debt Collection Practices Act", 15 U.S.C. sec. 1692 et seq. No damages under this section shall be recovered if damages are recovered for a like provision of said federal act.

(7) Notwithstanding subsection (1) of this section, harassment of the employer or the family of a consumer shall be considered an invasion of privacy and a civil action may be brought which is not subject to the damage limitations of said subsection (1).

(8) It shall be an affirmative defense to any action based upon failure of a debt collector, private child support collector, as defined in section 12-14.1-102 (9), or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

(9) There shall be no private cause of action under this section for any alleged violation of section 12-14-128 (4) (a). Violations of section 12-14-128 (4) (a) may be prosecuted only through administrative enforcement pursuant to section 12-14-114.

(10) (a) No provision of this section imposing any liability shall apply to any efforts by a state agency or state employee to recover moneys owed to the state as provided in section 24-30-202.4, C.R.S.

(b) If the state controller, or such designee as he or she designates to recover moneys owed to the state, fails to comply with any provision of this article, the controller, or such designee, shall be subject to disciplinary action as specified in the rules promulgated by the executive director of the department of personnel pursuant to article 4 of title 24, C.R.S.

12-14-114. Administrative enforcement - rules.

Compliance with this article shall be enforced by the administrator. The administrator may make reasonable rules for the administration and enforcement of this article, including standards of conduct for licensees and collection notices and forms.

12-14-115. License - registration - unlawful acts.

(1) It is unlawful for any person to:

(a) Conduct the business of a collection agency or advertise or solicit, either in print, by letter, in person, or otherwise, the right to make collection or obtain payment of any debt on behalf of another without having obtained a license under this article; or

(b) Conduct the business of a collection agency under any name other than that under which licensed.

(2) and (3) Repealed.

(3.5) It is unlawful for a person to act as a collections manager without having complied with sections 12-14-119 and 12-14-122.

(4) It is unlawful for any person to employ any person as a solicitor, collections manager, or debt collector under this article without complying with this section.

12-14-116. Collection agency board - created.

(1) For the purpose of carrying out the provisions of this article subject to section 12-14-117 (1), the governor shall appoint five members to the collection agency board, which board is hereby created. The members of the board serving on July 1, 2003, shall continue to serve their appointed terms, and their successors shall be appointed for three-year terms. Upon the death, resignation, or removal of any member of the board, the governor shall appoint a member to fill the unexpired term. Any member of the board may be removed by the governor for misconduct, neglect of duty, or incompetence. No member may serve more than two consecutive terms without first a lapse of at least one term before being appointed to any additional terms.

(2) No person shall be appointed as a member of such board unless such person is a bona fide resident of the state of Colorado. Effective July 1, 2000, board appointments shall ensure that three members of the board have been engaged in the collection business within the state of Colorado, either as a collections manager, owner, or part owner of a licensed collection agency. Two members of the board shall be representatives of the general public and not engaged in the collection business.

(3) Each member of the board shall be allowed a per diem compensation of fifty dollars and actual expenses for each day of active service, payable from the moneys appropriated to the board.

(4) The board shall meet annually for the purpose of organization by electing a chairman, a vice-chairman, and a secretary of the board for the ensuing year.

(5) The board shall meet regularly at such times and places as the business of the board may necessitate upon full and timely notice to each of the members of the board of the time and place of such meeting. A majority of said board shall constitute a quorum of said board.

12-14-117. Powers and duties of the administrator.

(1) Any provision of this article to the contrary notwithstanding, the board, created by section 12-14-116, is under the supervision and control of the administrator, who may exercise any of the powers granted to the board.

(2) Repealed.

(3) The administrator is authorized to approve or deny any application submitted pursuant to this article and to issue any license authorized by this article.

(4) Any complaint received by the administrator regarding violations of this article by an attorney shall be forwarded to the supreme court's attorney regulation counsel.

(5) The administrator shall enforce the provisions of article 14.1 of this title pursuant to section 12-14.1-111.

12-14-118. Collection agency license - required.

Any person acting as a collection agency must possess a valid license issued by the administrator in accordance with this article and any rules and regulations adopted pursuant thereto.

12-14-119. Collection agency license - requirements - application - fee - expiration.

(1) As requisites for licensure, the applicant for a collection agency license shall:

(a) (I) Be owned by, or employ as collections manager or an executive officer of the agency, at least one individual who has been engaged in a responsible position in an established collection agency for a period of at least two years.

(II) Notwithstanding the requirements of subparagraph (I) of this paragraph (a), the administrator may substitute other business experience for such requirements where such business experience has provided comparable experience in collections.

(b) (I) Employ a collections manager who shall:

(A) (Deleted by amendment, L. 2008, p. 1729, 7, effective July 1, 2008.)

(B) Be responsible for the actions of the debt collectors in that office.

(II) The collections manager may be the same individual specified in paragraph (a) of this subsection (1) if the collections manager also meets the qualifications of said paragraph (a).

(c) File a bond in the amount and manner specified in section 12-14-124;

(d) If a foreign corporation, comply fully with the laws of this state so as to entitle it to do business within the state.

(2) Each applicant for a collection agency license shall submit an application providing all information in the form and manner the administrator shall designate, including, but not limited to:

(a) The location, ownership, and, if applicable, the previous history of the business and the name, address, age, and relevant debt-collection experience of each of the principals of the business;

(b) A duly verified financial statement for the previous year;

(c) If a corporation, the name of the shareholder and the number of shares held by any shareholder owning ten percent or more of the stock; and

(d) For the principals and the collections manager of the applicant:

(I) The conviction of any felony or the acceptance by a court of competent jurisdiction of a plea of guilty or nolo contendere to any felony;

(II) The denial, revocation, or suspension of any license issued to any collection agency which employed or was owned by such persons, in whole or in part, directly or indirectly, and a statement of their position and authority at such collection agency:

(A) For any license issued pursuant to this article; or

(B) For any comparable license issued by any other jurisdiction;

(III) The taking of any other disciplinary or adverse action or the existence of any outstanding complaints against any collection agency which employed or was owned in whole or in part, directly or indirectly, by such persons, and a statement of their position and authority at such collection agency:

(A) For any license issued pursuant to this article; or

(B) When such action was taken by any other jurisdiction or such complaint exists in any other jurisdiction, whether or not a license was issued by that jurisdiction;

(IV) The suspension or termination of approval of any collections manager under this article or any other disciplinary or adverse action taken against the applicant, principal, or collections manager in any jurisdiction.

(3) At the time the application is submitted, the applicant shall pay a nonrefundable investigation fee in an amount to be determined by the administrator.

(4) When the administrator approves the application, the applicant shall pay a nonrefundable license fee in an amount to be determined by the administrator.

(5) The administrator shall establish procedures for the maintenance of license lists and the establishment of initial and renewal license fees and schedules. The administrator may change the renewal date of any license issued pursuant to this article to the end that approximately the same number of licenses are scheduled for renewal in each month of the year. Where any renewal date is so changed, the fee for the license shall be proportionately increased or decreased, as the case may be. Every licensee shall pay the administrator a license fee to be determined and collected pursuant to section 12-14-121 and subsection (4) of this section, and shall obtain a license certificate for the current license period. Notwithstanding any other provision of this section, a licensee, at any time, may voluntarily surrender the license to the administrator to be cancelled, but such surrender shall not affect the licensee's liability for violations of this article that occurred prior to the date of surrender.

(6) (Deleted by amendment, L. 2003, p. 1868, 8, effective May 21, 2003.)

(7) A collection agency must obtain a license for its principal place of business, but its branch offices, if any, need not obtain separate licenses. A collection agency with branch offices must notify the administrator in writing of the location of each branch office within thirty days after the branch office commences business.

12-14-120. License - issuance - grounds for denial - appeal - contents.

(1) Upon the approval of the license application by the administrator and the satisfaction of all application requirements, the administrator shall issue the applicant a license to operate as a collection agency.

(2) The administrator may deny any application for a license or its renewal if any grounds exist that would justify disciplinary action under section 12-14-130, for failure to meet the requirements of section 12-14-119, or if the applicant, the applicant's principals, or the applicant's collections manager have fraudulently obtained or attempted to obtain a license.

(3) If any application for a license or its renewal is denied, the applicant may appeal the decision pursuant to section 24-4-104, C.R.S.

(4) The license shall state the name of the licensee, location by street and number or office building and room number, city, county, and state where the licensee has his principal place of business, together with the number and date of such license and the date of expiration of the license, and shall further state that it is issued pursuant to this article and that the licensee is duly authorized under this article.

(5) Repealed.

(6) The administrator may deny any application for a license or its renewal if the collection agency has failed to perform the duties enumerated in section 12-14-123.

(7) The administrator may deny any application for a license or its renewal if the collection agency does not have a positive net worth.

12-14-121. Collection agency license - renewals.

Each licensee shall make an application to renew its license in the form and manner prescribed by the administrator. The application shall be accompanied by a nonrefundable renewal fee in an amount determined by the administrator.

12-14-122. Collection agency license - notification of change and reapplication requirements.

(1) (a) Upon any of the following changes, the licensee shall notify the administrator in writing of such change within thirty days after its occurrence:

(I) Change of business name or address;

(II) If a corporation or limited liability company, change in ownership of ten or more percent but less than fifty percent of the corporate stock or ownership interest.

(b) If the licensee fails to provide such written notification, the license shall automatically expire on the thirtieth day following such change.

(2) (a) Upon any of the changes specified in paragraph (c) of this subsection (2), the licensee shall apply for a new license within thirty days of said change. The administrator shall have twenty-five days to review the application and issue or deny the new license. If the administrator denies the license, the administrator shall provide to the licensee a written statement stating why the application for the license was denied, and the licensee shall have fifteen days to cure any defects in said application. The administrator shall approve or deny the resubmitted application within fifteen days.

(b) If the licensee fails to file an application for a new license, the license shall expire on the thirtieth day following the change which necessitated the new license application. If the application is denied and the licensee fails to resubmit the application within fifteen days of said denial, the license shall expire on the fifteenth day following the denial.

(c) The changes which require a new license application are:

(I) In a sole proprietorship or partnership, any change in the persons owning the collection agency;

(II) In a corporation or limited liability company, any change of ownership of fifty percent or more of the stock or ownership interest in any one transaction or a cumulative change of ownership of fifty percent or more from the date of the issuance of the license or from the date of the latest renewal of the license;

(III) Any change of ownership structure, including but not limited to a change to or from a sole proprietorship, partnership, limited liability company, or corporation. No investigation fee shall be required in the event of such a change and the application required may be more abbreviated than that required for an initial license, as determined by the administrator.

(3) (a) Upon a change of collections manager, the licensee shall notify the administrator in the form and manner designated by the administrator. The licensee shall appoint a new collections manager within thirty days of such change.

(b) The administrator, within fifteen days, shall approve or disapprove the qualifications of the new collections manager.

(c) The licensee may continue to operate as a collection agency unless and until the administrator disapproves the qualifications of the new collections manager.

(4) Any licensee which has submitted an application for a new license may continue to operate as a collection agency until the final decision of the administrator.

(5) The licensee may appeal the final decision of the administrator pursuant to section 24-4-104, C.R.S.

12-14-123. Duties of collection agencies - repeal.

(1) A licensee shall:

(a) Maintain, at all times, liquid assets in the form of deposit accounts in the total sum of not less than two thousand five hundred dollars more than all sums due and owing to all of its clients;

(b) (I) (A) Maintain, at all times, an office within this state that is open to the public during normal business hours, is staffed by at least one full-time employee, keeps a record of all moneys collected and remitted by the agency for residents of Colorado, and accepts payments physically made at the office for any debt the agency is attempting to collect.

(B) Notify, in each written communication, the consumer from whom the agency is attempting to collect a debt of the address and telephone number of the local office required by this subparagraph (I).

(II) Maintain, at all times, a toll-free telephone number that shall be available to any consumer who needs to make a toll call to reach the licensee in connection with a debt.

(c) Maintain, at all times, a trust account for the benefit of its clients which shall contain, at all times, sufficient funds to pay all sums due or owing to all of its clients. The trust account shall be maintained in a commercial bank, industrial bank, or savings and loan association account in this state or accessible in a branch in this state until disbursed to the creditor. Such account shall be clearly designated as a trust account and shall be used only for such purposes and not as an operating account. A deposit of all funds received to a trust account followed by a transfer of the agency share of the collection to an operating account is not a violation of this section.

(d) Within thirty days after the last day of the month in which any collections are made for a client, account to the client for all collections made during that month and remit to the client all moneys owed to the client pursuant to the agreement between the client and the collection agency;

(e) Upon written demand of the administrator, within five days of receipt of such demand, produce a complete set of all form notices or form letters used by the licensee in the collection of accounts;

(f) Be responsible, pursuant to this article, for violations of this article that are caused by its collections manager, debt collectors, or solicitors.

(2) (a) No collection agency shall employ any collections manager, debt collector, or solicitor who has been convicted of or who has entered a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state.

(b) No collection agency shall be owned or operated by the following persons who have been convicted of or who have entered a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state:

(I) The owner of a sole proprietorship;

(II) A partner of a partnership;

(III) A member of a limited liability company; or

(IV) An officer or director of a corporation.

(3) Paragraphs (a), (c), and (d) of subsection (1) of this section do not apply to a person collecting or attempting to collect a debt owned by the person collecting or attempting to collect such debt.

12-14-124. Bond.

(1) Each licensee shall maintain at all times and each applicant shall file, prior to the issuance of any license to such applicant, a bond in the sum of twelve thousand dollars plus an additional two thousand dollars for each ten thousand dollars or part thereof by which the average monthly sums remitted or owed to all of its clients during the previous year exceed fifteen thousand dollars; or, in the alternative, an applicant or licensee shall present evidence of a savings account, deposit, or certificate of deposit of the same sum and meeting the requirements of section 11-35-101, C.R.S. The total amount of the bond shall not exceed twenty thousand dollars and shall be in favor of the attorney general of the state of Colorado for use of the people of the state of Colorado and the administrator. Such bond shall be executed by the applicant or licensee as principal and by a corporation that is licensed by the commissioner of insurance to transact the business of fidelity and surety insurance as surety. If any such surety, during the life of the bond, cancels the bond or reduces the penal sum of the bond, the surety immediately shall notify the administrator in writing. The administrator shall give notice to the licensee that the bond has been cancelled or reduced and that the licensee's license shall automatically expire unless a new or increased bond with proper sureties is filed within thirty days after the date the administrator received the notice, or on such later date as is stated in the surety's notice.

(2) The bond shall include a condition that the licensee shall, upon demand in writing made by the administrator, pay over to the administrator for the use of any client from whom any debt is taken or received for collection by the licensee the proceeds of such collection, less the charges for collection in accordance with the terms of the agreement made between the licensee and the client.

(3) A client may file with the administrator a duly verified claim as to money due such client for money collected by a licensee. If the administrator makes a preliminary determination that a claim meets the requirements of this section, the administrator shall make a demand for the amount claimed. Such demand may be made on the licensee, the surety, or both.

(4) If a receiver has been appointed by any court of competent jurisdiction in the state of Colorado to take charge of the assets of any licensee, such receiver, upon the written consent of the administrator, may demand and receive payment on the bond from the surety and, upon order of the court, may bring suit upon the bond in the name of such receiver, without joining the administrator as a party to the action.

(5) If a client has filed a duly verified claim with the administrator, who has refused to make demand upon the licensee or surety, the client may bring suit against the licensee or surety on the bond for the recovery of money due from such licensee without assignment of such bond to the client. Nothing in this section shall preclude a client from making a demand on both the licensee and the surety.

(6) (a) Said bond shall include a condition that the licensee shall, upon written demand, turn over to the client any and all notes, valuable papers, or evidence of indebtedness which may have been deposited with said licensee by the client, but such licensee shall not be required to return any such papers, notes, or evidence of indebtedness on debts in process of collection, unless reimbursed by the client for the services performed on the debt so evidenced.

(b) "Debts in process of collection" means any debts which have been in said licensee's hands for less than nine months, debts on which payments are being made, or on which payments have been promised, debts on which suit has been brought, and claims which have been forwarded to any other collection agency or attorney.

(7) Such bond shall cover all matters placed with the licensee during the term of the license granted and any renewal, except as provided in this section. Such bond may be enforced in the manner described in this section, by a receiver appointed to take charge of the assets of any licensee, or by any client if the administrator refuses to act. The aggregate liability of the surety, for any and all claims that may arise under such bond, shall not exceed the penalty of such bond.

(8) Any licensee, at any time, may file a new bond with the administrator. Any surety may file with the administrator notice of withdrawal as surety on the bond of any licensee. Upon filing of such new bond or on expiration of thirty days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate, except as provided in subsection (9) of this section. The administrator shall cancel the bond given by any surety company upon being advised its license to transact the business of fidelity and surety insurance has been revoked by the commissioner of insurance and shall notify the licensee.

(9) No action shall be brought upon any bond required to be given and filed, after the expiration of two years from the surrender, revocation, or expiration of the license issued thereunder. After the expiration of said period of two years, all liability of the surety upon the said bond shall cease if no action has been commenced upon said bond before the expiration of the period.

(10) In lieu of an individual surety bond, the administrator may authorize a blanket bond covering qualifying licensees in the sum of two million dollars in favor of the attorney general of the state of Colorado for use of the people of the state of Colorado and the administrator. Each new and renewal applicant shall pay a fee in an amount determined by the administrator to offset the applicant's share of the blanket bond. Conditions and procedures regarding the bond shall be as set forth in this section for individual bonds.

(11) This section does not apply to a person collecting or attempting to collect a debt owned by the person collecting or attempting to collect such debt.

12-14-125. Debt collectors - registration required.

(1) Repealed.

(2) (Deleted by amendment, L. 95, p. 1237, 19, effective July 1, 1995.)

12-14-126. Solicitor - registration required. (Repealed)

12-14-127. Debt collectors and solicitors - certificates of registration - application - expiration - notification of change required. (Repealed)

12-14-128. Unlawful acts.

(1) In addition to the unlawful acts specified in sections 12-14-112 and 12-14-115, it is unlawful and a violation of this article for any person:

(a) To refuse or fail to comply with section 12-14-104, 12-14-105, 12-14-106, 12-14-107, 12-14-108, 12-14-109, 12-14-110, 12-14-118, 12-14-119 (1), or 12-14-123 (1) (b) to (1) (e) or (2);

(b) To aid or abet any person operating or attempting to operate in violation of this article, including but not limited to section 12-14-115; except that nothing in this article shall prevent any licensed collection agency from accepting, as forwardee, claims for collection from any collection agency or attorney whose place of business is outside this state;

(c) To recover or attempt to recover treble damages for any check, draft, or order not paid on presentment without complying with the provisions of section 13-21-109, C.R.S.

(2) It is unlawful and a violation of this article for any licensee or any attorney representing a licensee to invoke a cognovit clause in any note so as to confess judgment.

(3) It is unlawful and a violation of this article for any licensee to render or to advertise that it will render legal services; except that a licensee may solicit claims for collection and take assignments and pursue the collection thereof subject to the provisions of law concerning the unauthorized practice of law.

(4) It is unlawful and a violation of this article for any licensee, collections manager, debt collector, or solicitor:

(a) To refuse or fail to comply with a rule adopted pursuant to this article or any lawful order of the administrator; or

(b) To aid or abet any person in such refusal or failure.

(5) It is unlawful and a violation of this article for any person to falsify any information or make any misleading statements in any application authorized under this article.

(6) Any officer or agent of a corporation who personally participates in any violation of this article shall be subject to the penalties prescribed in section 12-14-129 for individuals.

12-14-129. Criminal penalties.

Any person who violates any provision of section 12-14-128 (1), (2), (3), or (4) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

12-14-130. Complaint - investigations - powers of administrator - sanctions.

(1) Upon the filing with the administrator by any interested person of a written complaint charging any person with a violation of this article, any rule adopted pursuant to this article, or any lawful order of the administrator, the administrator shall conduct an investigation thereof.

(2) For reasonable cause, the administrator may, on its own motion, conduct an investigation of the conduct of any person concerning compliance with this article.

(3) If any licensee or one of its principals or collections managers is convicted of or enters a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state, the conviction or plea shall constitute grounds for disciplinary action under this section.

(4) In any proceeding held under this section, the administrator may accept as prima facie evidence of grounds for disciplinary or adverse action any disciplinary or adverse action taken against a licensee, the licensee's principals, debt collector, solicitor, or collections manager by another jurisdiction that issues professional, occupational, or business licenses, if the conduct that prompted the disciplinary or adverse action by that jurisdiction would be grounds for disciplinary action under this section.

(5) For reasonable cause, the administrator or the administrator's designee has the right, during normal business hours without resort to subpoena, to examine the books, records, and files of any licensee. If the books, records, and files are located outside Colorado, the licensee shall bear all expenses in making them available.

(6) (a) For reasonable cause, the administrator may require the making and filing, by any licensee, at any time, of a written, verified statement of the licensee's assets and liabilities, including, if requested, a detailed statement of amounts due claimants. The administrator may also require an audited statement when cause has been shown that an audited statement is needed.

(b) Any financial statement of any applicant or licensee required to be filed with the administrator shall not be a public record but may be introduced in evidence in any court action or in any administrative action involving the applicant or licensee.

(7) For the purpose of any proceeding under this article, the administrator may subpoena witnesses and compel them to give testimony under oath. If any subpoenaed witness fails or refuses to appear or testify, the subpoenaing authority may petition the district court, and, upon proper showing, the court may order the witness to appear and testify. Disobedience of the order of court may be punished as a contempt of court.

(8) The administrator may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct any proceedings authorized under this article.

(9) If the administrator finds cause to believe a licensee or collections manager has violated this article, the rules adopted pursuant to this article, or any lawful order of the administrator, the administrator shall so notify the licensee or collections manager and hold a hearing. Any proceedings conducted pursuant to this section shall be in accordance with article 4 of title 24, C.R.S.

(10) (a) If the administrator or the administrative law judge finds that the licensee or collections manager has violated this article, the rules adopted pursuant to this article, or any lawful order of the administrator, or if the licensee fraudulently obtained a license, the administrator may issue letters of admonition; deny, revoke, or suspend the license of such licensee or approval of the collections manager; place such licensee or collections manager on probation; or impose administrative fines in an amount up to one thousand five hundred dollars per violation on the licensee or collections manager.

(b) The administrator may issue letters of admonition pursuant to paragraph (a) of this subsection (10) without a hearing; except that the licensee or collections manager receiving the letter of admonition may request a hearing before the administrator to appeal the issuance of the letter.

(c) A letter of admonition may be issued to a licensee or collections manager whether or not a license or approval has been surrendered prior to said issuance.

(d) No person whose license has been revoked shall be licensed again under the terms of this article for five years. No person hired as a collections manager whose approval has been terminated by the administrator for a violation of this article shall be hired again as a collections manager for five years.

(11) The court of appeals shall have jurisdiction to review all final actions and orders that are subject to judicial review of the administrator. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

(12) Members of the collection agency board, the administrator, expert witnesses, and consultants shall be immune from civil suit when they perform any duties in connection with any proceedings authorized under this section in good faith. Any person who files a complaint in good faith under this section shall be immune from civil suit.

12-14-130.1. Debt collectors for the department of personnel - complaint - disciplinary procedures.

(1) Any interested person may file a written complaint with the executive director of the department of personnel charging a debt collector in the employ of the department of personnel with a violation of:

(a) This article or a rule promulgated pursuant thereto;

(b) A lawful order of the state board of ethics; or

(c) The standards of conduct set forth in the code of conduct developed by the department of personnel for such debt collectors.

(2) Each complaint filed pursuant to this section shall be referred to the executive director of the department of personnel who shall conduct an investigation to determine if a violation of subsection (1) of this section occurred. If the executive director makes a determination that a violation did occur, the debt collector who is the subject of the complaint shall be subject to the disciplinary procedures set forth in rules adopted by the state personnel board. If a determination made pursuant to this subsection (2) is unsatisfactory to any party, an appeal may be made to the board of ethics for the executive branch of state government in the office of the governor.

(3) If the executive director of the department of personnel, or the board of ethics in the case of an appeal, makes a determination that a debt collector in the employ of the department of personnel has acted in violation of this article or a rule promulgated pursuant thereto, a lawful order of the state board of ethics, or the code of conduct described in paragraph (c) of subsection (1) of this section, such determination shall be made a part of the personnel file of the debt collector against whom the complaint was filed.

12-14-131. Records.

The administrator shall keep a suitable record of all license applications and bonds required to be filed. Such record shall state whether a license has been issued under such application and bond and, if revoked, the date of the filing of the order of revocation. The administrator shall keep a list of each person who has had a license revoked or has been terminated as a collections manager for a violation of this article. In such record, all licenses issued shall be indicated by their serial numbers and the names and addresses of the licensees. This section shall apply to renewal applications and renewal licenses. Such record shall be open for inspection as a public record in the office of the administrator.

12-14-132. Jurisdiction of courts.

County courts shall have concurrent jurisdiction with the district courts of this state in all criminal prosecutions for violations of this article.

12-14-133. Duty of district attorney.

It is the duty of the district attorney to prosecute all violations of the provisions of this article occurring within his district.

12-14-134. Remedies.

The remedies provided in this article are in addition to and not exclusive of any other remedies provided by law.

12-14-135. Injunction - receiver.

The district court in and for the city and county of Denver, upon application of the administrator, may issue an injunction or other appropriate order restraining any person from any violation of this article and may appoint a receiver or award other relief to effectuate the provisions of this article; order restitution for consumers or creditors for

violations of this article; impose civil penalties up to one thousand five hundred dollars per violation of this article; and award reasonable costs and attorney fees to the administrator if the administrator prevails in an action brought under this article. This provision shall be in addition to any other remedy and shall not prohibit the enforcement of any other law. The administrator shall not be required to show irreparable injury or to post a bond.

12-14-136. Disposition of fees and fines.

(1) (a) All revenue, except fines, collected pursuant to this article shall be collected by the administrator and transmitted to the state treasurer, who shall credit the same to the collection agency cash fund, which fund is hereby created. The general assembly shall make annual appropriations from such fund for the uses and purposes of this article. All revenue credited to such fund, including earned interest, shall be used for the administration and enforcement of this article.

(b) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on March 27, 2002, the state treasurer shall deduct four hundred sixty-two thousand dollars from the collection agency cash fund and transfer such sum to the general fund.

(c) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on March 5, 2003, the state treasurer shall deduct one hundred twenty thousand dollars from the collection agency cash fund and transfer such sum to the general fund.

(2) All fines collected pursuant to this article, including but not limited to fines collected pursuant to section 12-14-130, shall be collected by the administrator and transmitted to the state treasurer, who shall credit the same to the general fund.

12-14-137. Repeal of article.

This article is repealed, effective July 1, 2017.

RELATED LAWS

6-20-201 Definitions [Notification of debt by a health care provider]

For the purposes of this part 2, unless the context otherwise requires:

(1) "Collection activity" means only those activities provided or performed by a licensed collection agency, using a business name other than the name of the health care provider, for purposes of collecting a debt. The term does not include any standard billing procedures used by the health care provider or its agent in the normal course of business on current, nondelinquent accounts.

(2) "Collection agency" shall have the same meaning as in section 12-14-103 (2), C.R.S.

(3) "Health care provider" includes a health care facility licensed pursuant to article 3 of title 25, C.R.S., and any other health care provider.

6-20-202 Notice to patient of debt [by a health care provider]

1) (a) When a person has health benefit coverage to provide payment for care or treatment rendered by a health care provider and the person has notified the health care provider of coverage within thirty days after the date the care or treatment was rendered, and if the health coverage plan, as defined in section 10-16-102 (22.5), C.R.S., pays only a portion of the debt, prior to the assignment of the debt to a licensed collection agency, the health care provider shall mail written notice to the last-known address of the person responsible for payment of the debt at least thirty days before any collection activity on any amount due and owing the health care provider.

(b) The notice required of health care providers by paragraph (a) of this subsection (1) shall include the amount due and owing; the name, address, and telephone number of the health care provider; where payment may be made; the date of service; and the last date or number of days after the date of the notice the health care provider will accept payment prior to the debt being submitted to a collection agency or reporting adverse information to a consumer reporting agency for the debt for which notice was provided.

(2) (a) If the health care provider fails to provide the person with notice of such debt and all other information required by subsection (1) of this section, the health care provider shall not pursue any rights to collect such outstanding amount either through a collection agency or by any further efforts of the health care provider to collect the debt. In addition, the health care provider may not report adverse information to a consumer reporting agency for the debt for which notice was provided without providing notice to the person pursuant to subsection (1) of this section. The health care provider shall assist the person in correcting any adverse credit information because of the health care provider's failure to provide notice pursuant to subsection (1) of this section.

(b) Notwithstanding any provision of this section to the contrary, a health care provider may remedy a failure to give notice by providing a written report to the collection agency to withhold any collection activity and withholding any of the health care provider's own collection efforts until the provider complies with the notice and time requirements pursuant to subsection (1) of this section.

(c) Nothing in this subsection (2) shall be construed to require a health care provider to perform additional attempts to notify a person of the person's portion of the debt other than mailing the notice required pursuant to subsection (1) of this section to the person's last-known address and maintaining a record of such mailing.

(d) The failure of a health care provider or its agent to provide the notice required by subsection (1) of this section shall not create a cause of action or remedy against a collection agency under the "Colorado Fair Debt Collection Practices Act", article 14 of title 12, C.R.S.

13-21-109 Recovery of damages for checks, drafts or orders not paid upon presentment

(1) Any person who obtains money, merchandise, property, or other thing of value, or who makes any payment of any obligation other than an obligation on a consumer credit transaction as defined in section 5-1-301, C.R.S., by means of making any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation which is not paid upon its presentment is liable to the holder of such check, draft, or order or any assignee for collection for one of the following amounts, at the option of the holder or such assignee:

(a) The face amount of the check, draft, or order plus actual damages determined in accordance with the provisions of the "Uniform Commercial Code", title 4, C.R.S.; or

(b) An amount equal to the face amount of the check, draft, or order and:

(I) The amount of any reasonable posted or contractual charge not exceeding twenty dollars; and

(II) If the check, draft, or order has been assigned for collection to a person licensed as a collection agency pursuant to article 14 of title 12, C.R.S., as costs of collection, twenty percent of the face amount of the check, draft, or order but not less than twenty dollars; or

(c) An amount as provided in subsection (2) of this section.

(2) (a) If notice of nonpayment on presentment of the check, draft, or order has been given in accordance with the provisions of subsections (3) and (4) of this section and the total amount due as set forth in the notice has not been paid within fifteen days after such notice is given, instead of the amounts set forth in paragraph (a) or (b) of subsection (1)

of this section, the person shall be liable to the holder or any assignee for collection for three times the face amount of the check but not less than one hundred dollars.

(b) The person, also referred to in this section as the "maker", shall not be liable in accordance with the provisions of paragraph (a) of this subsection (2) if he establishes any one of the following

(I) That the account contained sufficient funds or credit to cover the check, draft, or order at the time the check, draft, or order was made, plus all other checks, drafts, and orders on the account then outstanding and unpaid;

(II) That the check, draft, or order was not paid because a paycheck, deposited in the account in an amount sufficient to cover the check, draft, or order, was not paid upon presentment;

(III) That funds sufficient to cover the check, draft, or order were garnished, attached, or set off and the maker had no notice of such garnishment, attachment, or setoff at the time the check, draft, or order was made;

(IV) That the maker of the check, draft, or order was not competent or of full age to enter into a legal contractual obligation at the time the check, draft, or order was made;

(V) That the making of the check, draft, or order was induced by fraud or duress;

(VI) That the transaction which gave rise to the obligation for which the check, draft, or order was given lacked consideration or was illegal.

(3) Notice that a check, draft, or order has not been paid upon presentment shall be in writing and given in person and receipted for, or by personal service, or by depositing the notice by certified mail, return receipt requested and postage prepaid, or by regular mail supported by an affidavit of mailing sworn and retained by the sender, in the United States mail and addressed to the recipient's most recent address known to the sender. If the notice is mailed and not returned as undeliverable by the United States postal service, notice shall be conclusively presumed to have been given on the date of mailing. For the purpose of this subsection (3), "undeliverable" does not include unclaimed or refused.

(4) The notice given pursuant to subsection (3) of this section shall include the following information regarding the unpaid check, draft, or order:

(a) The date the check, draft, or order was issued;

(b) The name of the bank, depository, person, firm, or corporation on which it was drawn;

(c) The name of the payee;

(d) The face amount;

(e) A statement of the total amount due, which shall be itemized and shall not exceed the amount permitted under paragraph (a) or (b) of subsection (1) of this section;

(f) A statement that the maker has fifteen days from the date notice was given to make payment in full of the total amount due; and

(g) A statement that, if the total amount due is not paid within fifteen days after the date notice was given, the maker may be liable in a civil action for three times the face amount of the check but not less than one hundred dollars and that, in such civil action, the court may award court costs and reasonable attorney fees to the prevailing party.

(5) No holder or assignee for collection shall assert that any maker has liability for any amount set forth under subsection (2) of this section unless such liability has been determined by entry of a final judgment by a court of competent jurisdiction.

(6) In any civil action brought under this section, the prevailing party may recover court costs and reasonable attorney fees. In addition, in an action brought under paragraph (b) of subsection (1) of this section, if the holder or assignee for collection prevails, actual costs of collection may be recovered by the holder or assignee for collection if such actual costs of collection are greater than the costs of collection provided under such paragraph (b).

(7) Nothing in this section shall be deemed to apply to any check, draft, or order on which payment has been stopped by the maker by reason of a dispute relating to the money, merchandise, property, or other thing of value obtained by the maker.

(8) Nothing in this section applies to any criminal case or affects eligibility or terms of probation.

(9) Any limitation on a cause of action under this section, except a cause of action under subsection (2) of this section, shall be governed by the provisions of section 13-80-103.5. Any limitation on a cause of action under subsection (2) of this section shall be governed by the provisions of section 13-80-102.

COLORADO CHILD SUPPORT COLLECTION CONSUMER PROTECTION ACT

12-14.1-101. Legislative declaration.

The general assembly hereby finds and determines that, to ensure that families receive the maximum amount of child support established by court or administrative order, additional consumer protections are needed for parents entitled to receive child support who contract with private collection agencies for the collection of child support.

12-14.1-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Arrears" or "arrearages" shall have the same meaning as provided in section 26-13.5-102 (2), C.R.S.

(2) "Child support" means any amount required to be paid pursuant to a judicial or administrative child support order.

(3) "Child support debt" shall have the same meaning as provided in section 26-13.5-102 (3), C.R.S.

(4) "Child support enforcement service" means a service, including related financial accounting services, performed directly or indirectly for the purpose of causing a payment required, or allegedly required, by a child support order to be made to the obligee to whom the payment is owed or to an agent of that individual.

(5) "Child support order" means any judgment, decree, order, or administrative order of support in favor of an obligee, whether temporary, permanent, final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered, requiring the payment of current child support, child support arrears, child support debt, retroactive support, or medical support, whether or not such order is combined with an order for maintenance.

(6) "Current child support" means the ongoing periodic support obligation that an obligor is required to pay pursuant to a child support order.

(7) "Obligee" means an individual who is owed child support under a child support order and who has entered or may enter into a contract with a collector.

(8) "Obligor" means any person owing or alleged to owe a duty of child support or against whom a proceeding for the establishment or enforcement of a duty to pay child support is commenced.

(9) (a) "Private child support collector" or "collector", except as provided in paragraph (b) of this subsection (9), means a person or entity who performs, or offers to perform, a child support enforcement service for an obligee under one or more of the following conditions:

(I) The obligee lives in Colorado at the time the contract is signed;

(II) The collector has a place of business or is licensed to conduct business in Colorado; or

(III) The collector contacts more than twenty-five obligors per year who live in Colorado.

(b) The term "private child support collector" does not include:

(I) A person or entity described in section 12-14-103 (2) (b);

(II) A nonprofit organization that is exempt from taxation under section 501(c)(3) of the federal "Internal Revenue Code of 1986" and charges no more than a nominal fee for providing assistance to any obligee with regard to the collection of child support;

(III) An attorney licensed to practice law in the state of Colorado;

(IV) An entity operating as an independent contractor with a county government agency that contracts to provide services that a delegate child support enforcement unit is required by law to provide; or

(V) A delegate child support enforcement unit acting pursuant to article 13.5 of title 26, C.R.S.

(10) "Private child support enforcement service contract" or "contract" means a contract or agreement, as described in section 12-14.1-106, pursuant to which a collector agrees to perform a child support enforcement service for an obligee for a fee.

(11) "State agency" means a government agency or its contractual agent administering a state plan approved under Title IV-D of the federal "Social Security Act", as amended.

12-14.1-103. Application of the "Colorado Fair Debt Collection Practices Act".

(1) Except as otherwise provided by the particular provisions of this article, this article supplements the requirements of the "Colorado Fair Debt Collection Practices Act", article 14 of this title, including but not limited to prohibited practices, licensing, and administrative and legal enforcement as it is applied to private child support collectors.

(2) Article 14 of this title also applies to private child support collectors.

12-14.1-104. Prohibited practices.

(1) A collector may not engage in any fraudulent, unfair, deceptive, or misleading act or practice in soliciting an obligee to enter into a contract for the provision of child support enforcement services or in offering or performing a service pursuant to such a contract, including but not limited to the following:

(a) Imposing a fee or charge, including costs, for any payment collected through the efforts of or as a result of actions taken by a federal, state, or county agency, including but not limited to support collected from federal or state income tax refunds, unemployment benefits, or social security benefits. If the collector discovers, or is notified by the obligee or the federal, state, or county agency, that a payment was collected through the efforts of a federal, state, or county agency, the collector shall not assess fees on the payment. Any fees improperly retained shall be refunded to the obligee within seven business days.

(b) Designating a current child support payment as arrears, interest, or other amount owed;

(c) Intercepting or redirecting from the obligor, the obligor's employer, or on the behalf of the obligor to the collector any child support paid to the obligee if payment is ordered to be made through a central payment registry;

(d) Intercepting, redirecting, or collecting any amounts owed to a government agency under an assignment of rights resulting from the payment of public assistance to the obligee or owed to a state agency;

(e) When a child support order directs that payment be made through a central payment registry, suggesting or instructing that the obligor or the obligor's employer send the payment to the collector;

(f) Making a misleading representation or omitting a material disclosure that, as a result, is misleading with respect to the identity of any entity that has performed or may perform a child support enforcement service for any obligee;

(g) Requiring an obligee to sign a private child support enforcement contract that does not conform to the provisions of section 12-14.1-106;

(h) Sending an income-withholding order to an entity, unless the collector is authorized by state law to send the income-withholding order;

(i) Accepting a settlement offer made by an obligor before:

(I) The collector has reviewed all settlement offers with the obligee; and

(II) The obligee has expressly authorized the collector to accept the settlement offer;

(j) Requesting or requiring an obligee to waive the right of the obligee to accept a settlement offer; or

(k) Collecting or attempting to collect child support after the obligor notifies the collector pursuant to the procedure provided in section 12-14.1-108 (1) (a) (III) and (1) (a) (IV) that the obligor disputes the existence or amount of the child support obligation and the collector has not obtained written verification of the existence or amount of the obligation or a copy of the judgment against the obligor and mailed the obligor a copy of the verification of judgment.

12-14.1-105. Fees.

(1) A private child support collector may not charge an obligee a fee unless:

(a) Before the obligee authorizes the fee, the amount of the fee, including the basis upon which the amount of the fee is calculated, is described accurately to the obligee in simple, easy-to-understand language; and

(b) Before the obligee incurs the fee, the obligee has authorized the fee in writing.

(2) A collector's contract with an obligee shall be for a specific dollar amount of child support to be collected. The contract shall explain in easy-to-understand language how the amount is to be calculated and may include any statutory interest to which the obligee is entitled and other amounts ordered by the court.

(3) A collector may charge a contingency fee for the collection of child support that is based on a percentage of the total child support collected.

(4) The maximum fee that may be charged by a collector as specified in subsection (3) of this section shall not exceed thirty-five percent of any amount collected.

(5) No other fees, charges, or costs may be assessed against the obligee, including an application fee.

12-14.1-106. Requirements relating to private child support enforcement service contracts.

(1) In order to perform a child support enforcement service for an obligee, a collector shall enter into a written private child support enforcement service contract that:

(a) Meets the requirements of this section;

(b) Has been delivered to the obligee in a form that the obligee may keep;

(c) Is dated and signed by the obligee and an authorized representative of the collector;

(d) Fully discloses each term of the contract, any fees that may be imposed pursuant to the contract, and any amount that the obligee would be required to pay to the collector for services performed under section 12-14.1-109 if the contract were to be canceled or terminated by the obligee; and

(e) Includes a copy of any other document the collector requires the obligee to sign.

(2) Before a collector offers or proposes to perform a child support enforcement service for an obligee, the collector shall deliver to the obligee the notice developed pursuant to the rule-making described in section 12-14.1-113 and shall obtain signed verification from the obligee that the obligee received the notice described in section 12-14.1-113.

(3) A private child support enforcement service contract shall contain the following:

(a) A clear and accurate explanation of the amount of child support that will be collected;

(b) A clear description of the child support enforcement services that may be provided pursuant to the contract;

(c) A clear and accurate explanation of the fees that will be deducted and an example of how they are deducted;

(d) A good faith estimate of the total amount of fees that will be charged pursuant to the contract;

(e) The full legal name, principal business address, and telephone number of the collector and any agents who assist the collector in providing a child support enforcement service and any separate name, address, and telephone number that the obligee may need for communication about the case;

(f) A complete and accurate copy of each disclosure and notice required by this article to be provided to the obligee before the obligee signs the contract;

(g) A conspicuous statement in bold-faced type, in immediate proximity to and on the same page as the space reserved for the signature of the obligee, which shall read as follows:

You may cancel this contract at any time within thirty days of signing the contract or after any twelve consecutive months in which the collector fails to make a collection.

(h) An explanation that the contract may be in effect for an extended period of time because of the difficulty in estimating how long it will take to collect the full amount of child support due under the contract; and

(i) A statement that a collector may not assess fees on collections attributable to a federal, state, or county agency. Fees improperly retained shall be refunded within seven business days.

(4) A private child support enforcement service contract shall not include:

(a) A mandatory arbitration clause that limits the rights of a person to seek judicial relief for a claim arising under the contract or this article;

(b) A clause that requires the obligee to change the payee or redirect child support payments that would otherwise be payable to the obligee, a state agency administering a state plan approved under title IV-D of the federal "Social Security Act", as amended, or a central payment registry, if payment is ordered to be made through a central payment registry;

(c) A clause that requires the obligee to close, or not open, a child support case with a county delegate child support enforcement unit or state agency administering a state plan approved under title IV-D of the federal "Social Security Act", as amended; and

(d) A clause that requires the obligee to waive his or her rights to review and consent to any modification of a contract entered into by the obligee.

(5) A private child support enforcement contract may not be modified by subsequent agreement unless the obligee has signed the subsequent agreement after receiving a written copy of the modifications.

(6) A private child support enforcement service contract shall be accompanied by a form, in duplicate, that has the heading "notice of cancellation" and contains a description of, in easy-to-understand language, the cancellation and termination provisions contained in section 12-14.1-109, the cancellation rights of the consumer obligee contained in section 12-14.1-109, and the principal business address of the collector.

(7) A collector who enters into a contract with an obligee shall retain a copy of the signed contract and the statement signed by the obligee acknowledging receipt of the preliminary notice required by subsection (2) of this section for a period of five years after the completion or settlement of the collection efforts by the collector or termination of the contract, whichever event occurs first.

12-14.1-107. Accounting for collections.

(1) A collector shall, on a monthly basis, provide to the obligee an accurate and up-to-date accounting that meets the requirements of rules promulgated by the administrator under section 12-14.1-113. The accounting shall be provided to the obligee by mail, telephone, or secure internet connection. The obligee shall request in writing the preferred method that the collector should use to provide the accounting to the obligee.

(2) In addition to the monthly accounting required pursuant to subsection (1) of this section, on request of the obligee at any time, the collector shall provide the obligee with any information pertaining to the case of the obligee, including the information described in this section, not more than five business days after the date the collector receives the request.

12-14.1-108. Verification of account information.

(1) In lieu of section 12-14-109, the following verification provisions shall apply to the collection of child support by a collector:

(a) Not later than five days after a collector initially communicates with an obligor on behalf of an obligee with respect to the collection of child support due, unless the obligor has paid the child support, the collector shall send the obligor a written notice containing the following:

(I) The name of the obligee;

(II) A statement of the amount of the child support arrears, including any associated interest, late payment fee, or other charge authorized by law, and of the amount of the current child support owed by the obligor to the obligee;

(III) A statement that the collector assumes that the obligor owes child support to the obligee and that the amounts owed as described in the statement pursuant to subparagraph (II) of this paragraph (a) are correct, unless the obligor disputes the existence or amount of the child support obligation within thirty days after receipt of the notice;

(IV) A statement that if, within the thirty-day period described in subparagraph (III) of this paragraph (a), the obligor notifies the collector in writing that the obligor disputes the existence or amount of the child support obligation, the collector will cease efforts to collect the child support, subject to paragraph (b) of this subsection (1), until the collector:

(A) Obtains written verification of the existence or amount of the obligation or a copy of the judgment against the obligor; and

(B) Mails to the obligor a copy of the verification or judgment; and

(V) A statement that the arrears balance reflected does not include any amounts owed to a county delegate child support enforcement unit or state agency administering a state plan approved under title IV-D of the federal "Social Security Act", as amended.

(b) A statement made by a collector pursuant to subparagraph (IV) of paragraph (a) of this subsection (1) shall not affect the enforceability of a valid income-withholding order or assignment issued by an appropriate authority under state law for child support collection purposes.

(c) The failure of an obligor to dispute the amount or existence of child support pursuant to subparagraph (IV) of paragraph (a) of this subsection (1) shall not be construed as an admission of liability by the obligor.

12-14.1-109. Cancellation or termination of private child support enforcement service contract.

(1) An obligee may cancel a private child support enforcement service contract with a collector at any time within thirty days of signing the contract or after any twelve consecutive months in which the collector fails to make a collection. The notification of cancellation shall be in writing and shall be effective upon receipt of the notice by the collector. If the notification of cancellation is received by the collector subsequent to the thirty-day time period following the signing of the contract, the notification shall be valid if post-marked within the thirty-day time period.

(2) Subject to the provisions of subsection (3) of this section, a private child support enforcement service contract may provide that, notwithstanding the cancellation of the contract by the obligee, the collector shall have the right to receive a fee for arrears collected under the contract if, as a result of the efforts of the collector, the obligee

subsequently receives child support arrears or interest subject to collection pursuant to the contract. No other fees or costs shall be assessed for the cancellation of the contract.

(3) An obligee shall have no obligation pursuant to the private child support enforcement service contract if:

(a) The obligee cancels the contract:

(I) At any time before midnight of the thirtieth business day after signing the contract; or

(II) After any twelve consecutive months in which the private child support collector fails to make a collection; or

(b) The collector violates this article with respect to the contract.

(4) A contract shall terminate without action by either party when the contract amount has been collected.

12-14.1-110. Civil liability.

The provisions of section 12-14-113, with the exception of the statute of limitations set forth in subsection (4) of said section, shall apply to any violation of this article and are in addition to and not exclusive of any other remedies provided by law.

12-14.1-111. Administrative enforcement.

This article shall be enforced by the administrator, as defined in section 12-14-103 (1), and may be enforced as provided in article 14 of this title. Except as otherwise provided in or limited by this article, all rules adopted pursuant to section 12-14-114 shall apply to this article.

12-14.1-112. Statute of limitations.

(1) An action to enforce any liability under this article may be brought before the later of:

(a) The end of the five-year period beginning on the date of the occurrence of the violation involved; or

(b) In a case in which a collector willfully misrepresents any information that the collector is required by any provision of this article to disclose to an obligee and the misrepresentation is material to the establishment of the liability of the collector to the obligee under this article, five years after the date the obligee discovers the misrepresentation.

12-14.1-113. Notice - rules.

(1) The administrator shall promulgate rules related to the notice required to be provided to the obligee in section 12-14.1-106 (2) and the accounting required to be provided in section 12-14.1-107.

(2) The notice required by section 12-14.1-106 (2) shall, at a minimum, address the following:

(a) The option that child support collection services are offered at minimal or no cost through government child support collection services in every county in Colorado and in every state;

(b) A statement that the collector cannot require a government child support collection service to send payments to any person but the obligee;

(c) A statement that the collector will not provide legal advice or act as legal counsel for the obligee;

(d) A statement related to the rights the obligee has pursuant to this article; and

(e) A statement that the obligee may have the private child support enforcement service contract reviewed by an attorney.

COLORADO CREDIT SERVICES ORGANIZATION ACT

12-14.5-101. Short title.

This part 1 shall be known and may be cited as the "Colorado Credit Services Organization Act".

12-14.5-102. Legislative declaration.

(1) The general assembly finds and declares that:

(a) The ability to obtain and use credit has become of great importance to consumers, who have a vital interest in establishing and maintaining their creditworthiness and credit standing. The extension or receipt of credit has value and should be protected. As a result, consumers who have experienced credit problems may seek assistance from credit services organizations which offer to obtain credit or improve the credit standing of such consumers.

(b) Certain advertising and business practices of some credit services organizations have worked a financial hardship upon the people of this state, often those who are of limited economic means and inexperienced in credit matters. Credit services organizations have significant impact upon the economy and well-being of this state and its people.

(c) The purposes of this part 1 are to provide prospective buyers of services of credit services organizations with the information necessary to make an intelligent decision regarding the purchase of those services and to protect the public from unfair or deceptive advertising and business practices;

(d) This part 1 shall be construed liberally to achieve these purposes; and

(e) It is the intent of the general assembly to further regulate the conduct of persons who provide credit services in accordance with this part 1 by adopting the regulatory requirements contained in part 2 of this article.

12-14.5-103. Definitions.

As used in this part 1, unless the context otherwise requires:

(1) "Buyer" means any individual who is solicited to purchase or who purchases the services of a credit services organization.

(2) "Credit services organization" means any person, including a nonprofit organization exempt from taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", who, with respect to the extension of credit by others, represents that such person can or will, in return for the payment of money or other valuable consideration by the buyer, improve or attempt to improve a buyer's credit record, history, or rating. The term "credit services organization" does not include the following:

(a) (Deleted by amendment, L. 2009, (HB 09-1141), ch. 41, p. 159, 7, effective July 1, 2009.)

(b) Any person licensed to practice law in this state if such person renders such credit services within the course and scope of said person's practice as an attorney.

(3) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes.

(4) "Person" includes any individual, corporation, partnership, joint venture, or any business entity.

(5) Repealed.

12-14.5-104. Prohibited acts.

(1) A credit services organization; its salespersons, agents, and representatives; and independent contractors who sell or attempt to sell the services of a credit services organization shall not:

(a) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the buyer;

(b) Make, counsel, or advise any buyer to make any statement that is untrue or misleading to a credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit with respect to a buyer's creditworthiness, credit standing, or credit capacity;

(c) Make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization; or

(d) Make, counsel, or advise any buyer to make a request to a credit reporting agency to verify information contained in a consumer credit report, unless the buyer states in writing to the credit services organization that the buyer believes the information to be verified is incorrect or inaccurate, and states specifically the basis of the inaccuracy or incorrectness of each disputed item of information.

12-14.5-105. Surety bond. (Repealed)

12-14.5-106. Written disclosure required.

Before the execution of a contract or agreement between the buyer and a credit services organization or before the receipt by the credit services organization of any money or other valuable consideration, whichever occurs first, the credit services organization shall provide the buyer with a statement in writing containing all the information required by section 12-14.5-107. The credit services organization shall

maintain on file for a period of two years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement.

12-14.5-107. Content of written disclosure.

(1) The information statement required pursuant to section 12-14.5-106 shall be printed in at least ten-point type and shall include:

(a) The following statements concerning consumer credit reports and consumer credit agencies:

RIGHTS UNDER COLORADO AND FEDERAL LAW

You have a right to obtain a copy of your credit report from a credit bureau at no charge once per year with additional copies available for a small fee. You have a right to dispute inaccurate information by contacting the credit bureau directly. However, you have no right to have accurate information removed from your credit bureau report. Under the federal "Fair Credit Reporting Act", the credit bureau must remove accurate negative information from your report only if it is over 7 years old. Bankruptcy can be reported for 10 years. Even when a debt has been completely repaid, your report can show that it was paid late if that is accurate. You have a right to sue a credit repair company that violates the "Colorado Credit Services Organization Act". This law prohibits deceptive practices by repair companies. The "Colorado Credit Services Organization Act" also gives you a right to cancel your contract for any reason within 5 working days from the date you sign it.

The Federal Trade Commission enforces the federal "Fair Credit Reporting Act". For more information, call or write the Federal Trade Commission. The administrator of the "Uniform Consumer Credit Code" enforces the "Colorado Credit Services Organization Act". For more information, call or write the Colorado attorney general's office.

(b) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total amount the buyer will have to pay, or become obligated to pay, for the services.

(c) and (d) (Deleted by amendment, L. 2003, p. 1897, 18, effective July 1, 2003.)

12-14.5-108. Written contracts required.

(1) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, dated, signed by the buyer, and include the following:

(a) A conspicuous statement in bold-faced type, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time prior to midnight of the fifth working day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to some other person;

(c) A full and detailed description of the services to be performed by the credit services organization for the buyer, including:

(I) All guarantees and all promises of full or partial refunds;

(II) The estimated date by which the services are to be performed, or the estimated length of time for performing the services;

(III) A list of the adverse information appearing on the buyer's credit report that is to be modified and a description of the precise nature of each modification. A copy of the consumer's current credit report issued by a consumer credit reporting agency shall be annexed to the contract with the adverse entries and proposed modifications clearly marked.

(d) The credit services organization's principal business address which shall be the actual office location of the organization and the name and address of its agent in the state authorized to receive service of process.

(2) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation", that shall be attached to the contract, shall be easily detachable, and shall contain in bold-faced type the following statement written in the same language as used in the contract:

Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within five (5) working days from the date the contract is signed.

If you cancel any payment made by you under this contract, it will be returned within ten (10) days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice, or any other written notice to (name of seller) at (address of seller) (place of business) not later than midnight (date) .

I hereby cancel this transaction,
(date)
(purchaser's signature).

(3) The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

12-14.5-109. Waivers and exemptions.

(1) Any waiver by a buyer of any part of this part 1 is void as against public policy. Any attempt by a credit services organization to have a buyer waive rights given by this part 1 is a violation of this part 1.

(2) In any proceeding involving this part 1, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

12-14.5-110. Criminal penalties and injunctive relief.

(1) Any person who violates any provision of this part 1 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Violating any provision of this part 1 with respect to any buyer shall constitute a class 1 public nuisance subject to the provisions of part 3 of article 13 of title 16, C.R.S.

(2) The administrator of the uniform consumer credit code, designated pursuant to section 5-6-103, C.R.S., or the district attorney of any judicial district may maintain an action to enjoin violations of this part 1 and for restitution and penalties in an amount not to exceed one thousand five hundred dollars per violation. The state treasurer shall transfer the penalties collected pursuant to this subsection (2) to the general fund.

(3) Costs and reasonable attorney fees shall be awarded to the administrator of the uniform consumer credit code or a district attorney in all injunctive actions where the administrator of the uniform consumer credit code or district attorney successfully enforces this part 1.

12-14.5-110.5. Powers of administrator of the uniform consumer credit code and district attorney - subpoenas - hearings.

(1) When the administrator of the uniform consumer credit code or district attorney has cause to believe that any person has violated or is violating any provision of this part 1, the administrator or district attorney may, in addition to the other powers conferred upon the administrator or district attorney by this part 1:

(a) Request such person to file a statement or report in writing under oath or otherwise, on forms prescribed by him, as to all facts and circumstances concerning the sale or advertisement of goods, property, or services by any credit services organization and any other data and information he deems necessary;

(b) Prior to the filing of a complaint, issue subpoenas to require the attendance of witnesses or the production of documents, conduct hearings in aid of any investigation or inquiry, administer oaths, and examine under oath any person in connection with the sale or advertisement of goods, property, or services by any credit services organization.

(2) Service of any notice or subpoena may be made in the manner prescribed by law or under the Colorado rules of civil procedure.

12-14.5-111. Damages.

(1) Any buyer injured by a violation of this part 1 or by a credit services organization's breach of contract subject to this part 1 may maintain an action in a court of competent jurisdiction for recovery of actual damages, plus cost of suit and reasonable attorney fees. In case of an action brought by a buyer, actual damages shall not be less than the amount paid by the buyer to the credit services organization.

(2) In the event of a willful violation by a credit services organization of this part 1 or of a contract subject to this part 1, a person who is injured thereby shall be awarded, in addition to the damages allowable under subsection (1) of this section, an additional amount equal to twice the actual damages awarded under subsection (1) of this section.

(3) Repealed.

12-14.5-112. Aiding or assisting violation.

Any individual who, as a director, officer, partner, member, salesperson, agent, or representative of a credit services organization that violates this part 1, assists or aids, directly or indirectly, in such violation shall be responsible therefor and subject to the criminal penalties, injunctive relief, and damages provided for in section 12-14.5-111 and this section.

12-14.5-113. Remedies cumulative.

The remedies provided for in this part 1 are cumulative and in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

12-14.5-114. Relation between parts of article.

In the event of a conflict between part 2 of this article and this part 1, the provisions of part 2 of this article shall control. A credit service organization that also performs debt-management services shall comply with the requirements of part 2 of this article.

UNIFORM DEBT-MANAGEMENT SERVICES ACT

12-14.5-201. Short title.

This part 2 shall be known and may be cited as the "Uniform Debt-Management Services Act".

12-14.5-202. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Administrator" means the assistant attorney general designated by the attorney general pursuant to section 5-6-103, C.R.S.

(2) "Affiliate":

(A) With respect to an individual, means:

(i) The spouse of the individual;

(ii) A sibling of the individual or the spouse of a sibling;

(iii) An individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse;

(iv) An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or

(v) Any other individual occupying the residence of the individual; and

(B) With respect to an entity, means:

(i) A person that directly or indirectly controls, is controlled by, or is under common control with, the entity;

(ii) An officer of, or an individual performing similar functions with respect to, the entity;

(iii) A director of, or an individual performing similar functions with respect to, the entity;

(iv) A person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year or a person that owns more than ten percent of, or an individual who is employed by or is a director of, a person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year;

(v) An officer or director of, or an individual performing similar functions with respect to, a person described in sub-subparagraph (i) of this subparagraph (B);

(vi) The spouse of, or an individual occupying the residence of, an individual described in sub-subparagraphs (i) to (v) of this subparagraph (B); or

(vii) An individual who has the relationship specified in sub-subparagraph (iv) of subparagraph (A) of this paragraph (2) to an individual or the spouse of an individual described in sub-subparagraphs (i) to (v) of this subparagraph (B).

(3) "Agreement" means an agreement between a provider and an individual for the performance of debt-management services.

(4) "Bank" means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union, mortgage bank, and trust company, engaged in the business of banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority.

(5) "Business address" means the physical location of a business, including the name and number of a street.

(6) (Repealed)

(7) (Repealed)

(8) "Concessions" means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

(9) "Day" means calendar day.

(10) (A) "Debt-management services" means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions, but does not include:

(i) Legal services provided in an attorney-client relationship by an attorney licensed to practice law in this state; or

(ii) Accounting services provided in an accountant-client relationship by a certified public accountant certified or authorized by the state board of accountancy to provide accounting services in this state.

(B) The exemptions in subparagraph (A) of this paragraph (10) do not apply to any person who directly or indirectly provides any debt management services on behalf of a licensed attorney or certified public accountant if that person is not an employee of the licensed attorney or certified public accountant.

(11) "Entity" means a person other than an individual.

(12) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(12.5) “Individual” means a natural person.

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.

(14) "Plan" means a program or strategy in which a provider furnishes debt-management services to an individual and that includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.

(15) "Principal amount of the debt" means the amount of a debt at the time of an agreement.

(16) "Provider" means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) "Settlement fee" means a charge imposed on or paid by an individual in connection with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.

(19) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(21) (A) "Trust account" means an account held by a provider that is:

(i) Established in an insured bank;

(ii) Separate from other accounts of the provider or its designee;

(iii) Designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider; and

(iv) Used to hold money of one or more individuals for disbursement to creditors of the individuals.

(B) For a plan under which creditors will settle debts for less than the principal amount of the debt, nothing in this act prohibits a provider from requesting or requiring

an individual to place funds in an account, separate from the individual's then-existing bank account, to be used for the provider's fees and for payments to creditors or debt collectors in connection with the debt management services, if:

(i) The funds are held in an account at an insured financial institution;

(ii) The individual owns the funds held in the account and is paid accrued interest on the account, if any;

(iii) The entity administering the account is not owned, controlled by, or in any way affiliated with the provider;

(iv) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt management provider or plan; and

(v) The individual may withdraw from the debt management plan at any time without penalty, and immediately receives all funds in the account, other than fees earned in compliance with section 12-14.5-223, as required by section 12-14.5-226.

12-14.5-203. Exempt agreements and persons.

(a) This part 2 does not apply to an agreement with an individual who the provider has no reason to know resides in this state at the time of the agreement.

(b) This part 2 does not apply to a provider to the extent that the provider:

(1) Provides or agrees to provide debt-management, educational, or counseling services to an individual who the provider has no reason to know resides in this state at the time the provider agrees to provide the services;

(2) Receives no compensation for debt-management services from or on behalf of the individuals to whom it provides the services or from their creditors;

(3) Provides debt-management services only to persons that have incurred debt in the conduct of business; or

(4) Is subject to the "Colorado Foreclosure Protection Act", part 11 of article 1 of title 6, C.R.S.

(c) This part 2 does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:

(1) A judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors;

(2) A bank;

(3) An affiliate, as defined in section 12-14.5-202 (2) (B) (i), of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or

(4) A title insurer, escrow company, or other person that provides bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

12-14.5-204. Registration required.

(a) Except as otherwise provided in subsection (b) of this section, on or after July 1, 2008, a provider may not provide debt-management services to an individual who it reasonably should know resides in this state at the time it agrees to provide the services, unless the provider is registered under this part 2.

(b) If a provider is registered under this part 2, subsection (a) of this section does not apply to an employee or agent of the provider.

(c) The administrator shall maintain and publicize a list of the names of all registered providers.

12-14.5-205. Application for registration - form, fee, and accompanying documents.

(a) An application for registration as a provider shall be in a form prescribed by the administrator.

(b) An application for registration as a provider shall be accompanied by:

(1) The fee established by the administrator. The administrator shall transmit the fee to the state treasurer, who shall deposit it in the uniform consumer credit code cash fund, created in section 5-6-204 (1), C.R.S.

(2) The bond required by section 12-14.5-213;

(3) Identification of all trust accounts required by section 12-14.5-222 and an irrevocable consent authorizing the administrator to review and examine the trust accounts;

(4) (Repealed)

(5) Proof of compliance with the requirements of title 7, C.R.S., that specify the prerequisites for an entity to do business in this state; and

(6) If the applicant is organized as a not-for-profit entity or is exempt from taxation, evidence of not-for-profit and tax-exempt status applicable to the applicant under the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501, as amended.

12-14.5-206. Application for registration - required information.

An application for registration shall be signed under penalty of false statement and include:

(1) The applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic-mail addresses, and internet web site addresses;

(2) All names under which the applicant conducts business;

(3) The address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;

(4) The name and home address of each officer and director of the applicant and each person that owns at least ten percent of the applicant;

(5) Identification of every jurisdiction in which, during the five years immediately preceding the application:

(A) The applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or

(B) Individuals have resided when they received debt-management services from the applicant;

(6) A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to initiate transactions to the trust account required by section 12-14.5-222;

(7) The applicant's financial statements, audited by an accountant licensed to conduct audits, for each of the two years immediately preceding the application or, if it has not been in operation for the two years preceding the application, for the period of its existence;

(8) (Repealed)

(9) (Repealed)

(10) A description of the three most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this state and a copy of any materials used or to be used in those programs;

(11) A description of the applicant's financial analysis and initial plan, including any form or electronic model, used to evaluate the financial condition of individuals. The description shall be deemed to be confidential commercial data under section 24-72-204 (3) (a) (IV), C.R.S.

(12) A copy of each form of agreement that the applicant will use with individuals who reside in this state;

(13) The schedule of fees and charges that the applicant will use with individuals who reside in this state;

(14) At the applicant's expense, the results of a state and national fingerprint-based criminal history records check, conducted within the immediately preceding twelve months, covering every officer of the applicant and every employee or agent of the applicant who is authorized to initiate transactions to the trust account required by section 12-14.5-222. The administrator shall be the authorized agency to receive information regarding the result of the national criminal history records check.

(15) The names and addresses of all employers of each director during the five years immediately preceding the application; except that if a director receives no compensation from the provider, the applicable period shall be two years. The names and addresses shall be deemed to be confidential.

(16) A description of any ownership interest of at least ten percent by a director, owner, or employee of the applicant in:

(A) Any affiliate of the applicant; or

(B) Any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;

(17) For not-for-profit providers, a statement of the amount of compensation of the applicant's five most highly compensated employees for each of the three years immediately preceding the application or, if it has not been in operation for the three years immediately preceding the application, for the period of its existence;

(18) The identity of each director who is an affiliate, as defined in section 12-14.5-202 (2) (A) or (2) (B) (i), (2) (B) (ii), (2) (B) (iv), (2) (B) (v), (2) (B) (vi), or (2) (B) (vii), of the applicant; and

(19) Any other information that the administrator reasonably requires to perform the administrator's duties under section 12-14.5-209.

12-14.5-207. Application for registration - obligation to update information.

An applicant or registered provider shall notify the administrator within fifteen days after a change in the information specified in section 12-14.5-205 (b) (6) or section 12-14.5-206 (1), (3), (6), (12), or (13).

12-14.5-208. Application for registration - public information.

Except for the information required by section 12-14.5-206 (7), (11), (14), (15), and (17) and the addresses required by section 12-14.5-206 (4), the administrator shall make the information in an application for registration as a provider available to the public.

12-14.5-209. Certificate of registration - issuance or denial.

(a) Except as otherwise provided in subsections (b) and (c) of this section, the administrator shall issue a certificate of registration as a provider to a person that complies with sections 12-14.5-205 and 12-14.5-206.

(b) The administrator may deny registration if:

(1) The application contains information that is materially erroneous or incomplete;

(2) An officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;

(3) The applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others; or

(4) The administrator upon reasonable belief finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this part 2.

(c) The administrator shall deny registration if:

(1) The application is not accompanied by the fee established by the administrator; or

(2) With respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt status under the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501, as amended, the applicant's board of directors is not independent of the applicant's employees and agents.

(d) A board of directors is not independent for purposes of subsection (c) of this section if more than one-fourth of its members:

(1) Are affiliates of the applicant, as defined in section 12-14.5-202 (2) (A), (2) (B) (i), (2) (B) (ii), (2) (B) (iv), (2) (B) (v), (2) (B) (vi), or (2) (B) (vii); or

(2) After the date ten years before first becoming a director of the applicant, were employed by or directors of a person that received from the applicant more than twenty-five thousand dollars in either the current year or the preceding year.

(e) The administrator may temporarily approve a certificate of registration in the event an applicant has made a timely effort to obtain a criminal records check as required in section 12-14.5-206 (14), but for which a timely return of information has not occurred, for a reasonable period of time but no longer than one hundred twenty days, provided that the applicant has provided all other required information in the application for registration and the administrator finds no reason to believe from the information that has been provided that the applicant may not provide fair and honest services to debtors under this part 2.

12-14.5-210. Certificate of registration - timing.

(a) The administrator shall approve or deny an initial registration as a provider within ninety days after an application is filed. In connection with a request pursuant to section 12-14.5-206 (19) for additional information, the administrator may extend the ninety-day period for not more than thirty days. Within seven days after denying an application, the administrator, in a record, shall inform the applicant of the reasons for the denial.

(b) If the administrator denies an application for registration as a provider or does not act on an application within the time prescribed in subsection (a) of this section, the applicant may appeal and request a hearing pursuant to article 4 of title 24, C.R.S.

(c) (Repealed)

12-14.5-211. Renewal of registration.

(a) A provider shall obtain a renewal of its registration annually before the expiration date of the registration to be renewed, as specified in this section.

(b) (Repealed)

(c) An application for renewal of registration as a provider shall be in a form prescribed by the administrator, signed under penalty of false statement, and:

(1) Be filed before the registration expires;

(2) Be accompanied by the fee established by the administrator and the bond required by section 12-14.5-213;

(3) Contain a financial statement, reviewed by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application, except that the third renewal after initial registration and every fourth renewal thereafter shall be audited rather than reviewed;

(4) Disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable;

(5) (Repealed)

(6) Disclose the total amount of money received by the applicant pursuant to plans during the preceding twelve months from or on behalf of individuals who reside in this state and the total amount of money distributed to creditors of those individuals during that period;

(7) If the applicant does not hold money on behalf of any debtor, disclose for business done with debtors in the state of Colorado during the preceding twelve months, the number of debtors with whom the applicant has had agreements, the number of fully settled debt agreements with creditors that applicant concluded for debtors, and an estimate of the total amount of debt under contract between applicant and debtors; and

(8) Provide any other information that the administrator reasonably requires to perform the administrator's duties under this section.

(d) Except for the information required by section 12-14.5-206 (7), (11), (14), (15), and (17) and the addresses required by section 12-14.5-206 (4), the administrator shall make the information in an application for renewal of registration as a provider available to the public.

(e) If a registered provider files a timely and complete application for renewal of registration, the registration remains effective until the administrator, in a record, notifies the applicant of a denial and states the reasons for the denial.

(f) If the administrator denies an application for renewal of registration as a provider, the applicant, within thirty days after receiving notice of the denial, may appeal and request a hearing pursuant to article 4 of title 24, C.R.S. Subject to section 12-14.5-234, while the appeal is pending, the applicant shall continue to provide debt-management services to individuals with whom it has agreements. If the denial is affirmed, subject to the administrator's order and section 12-14.5-234, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the administrator, it transfers the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control.

(g) If a registered provider fails to file by July 1 a complete application for renewal of registration and the required renewal fee, the registration shall automatically expire on that date.

12-14.5-212. Registration in another state.

If a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider may submit a copy of that license or certificate and the application for it instead of an application in the form prescribed by section 12-14.5-205 (a), 12-14.5-206, or 12-14.5-211 (c). The administrator shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this state if:

(1) The application in the other state contains information substantially similar to, or more comprehensive than, that required in an application submitted in this state;

(2) The applicant provides the information required by section 12-14.5-206 (1), (3), (10), (12), and (13);

(3) The applicant, under penalty of false statement, certifies that the information contained in the application is current or, to the extent it is not current, supplements the application to make the information current; and

(4) The application is accompanied by the items required in section 12-14.5-205 (b).

12-14.5-213. Bond required.

(a) Except as otherwise provided in section 12-14.5-214, a provider that is required to be registered under this part 2 shall file a surety bond with the administrator, which shall:

(1) Be in effect during the period of registration and for two years after the provider ceases providing debt-management services to individuals in this state; and

(2) Run to this state for the benefit of this state and of individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear.

(b) A surety bond filed pursuant to subsection (a) of this section shall:

(1) Be in the amount of fifty thousand dollars or other larger or smaller amount that the administrator determines is warranted by the financial condition and business experience of the provider, the history of the provider in performing debt-management services, the risk to individuals, and any other factor the administrator considers appropriate;

(2) Be issued by a bonding, surety, or insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization; and

(3) Have payment conditioned upon noncompliance of the provider or its agent with this part 2.

(c) If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider and the surety shall notify the administrator immediately and, within thirty days after notice by the administrator, the provider shall file a new or additional surety bond in an amount set by the administrator. The amount of the new or additional bond shall be at least the amount of the bond immediately before payment of the claim or judgment. If for any reason a surety terminates a bond, the surety shall provide written notice of the termination to the administrator immediately, and the provider shall immediately file a new surety bond in the amount of fifty thousand dollars or other amount determined pursuant to subsection (b) of this section.

(d) The administrator or an individual may obtain satisfaction out of the surety bond procured pursuant to this section if:

(1) The administrator assesses expenses under section 12-14.5-232 (b) (1), issues a final order under section 12-14.5-233 (a) (2), or recovers a final judgment under section 12-14.5-233 (a) (4), (a) (5), or (d); or

(2) An individual recovers a final judgment pursuant to section 12-14.5-235 (a), (b), (c) (1), (c) (2), or (c) (4).

(e) If claims against a surety bond exceed or are reasonably expected to exceed the amount of the bond, the administrator, on the initiative of the administrator or on petition

of the surety, shall, unless the proceeds are adequate to pay all costs, judgments, and claims, distribute the proceeds in the following order:

(1) To satisfaction of a final order or judgment under section 12-14.5-233 (a) (2), (a) (4), (a) (5), or (d);

(2) To final judgments recovered by individuals pursuant to section 12-14.5-235 (a), (b), (c) (1), (c) (2), or (c) (4), pro rata;

(3) To claims of individuals established to the satisfaction of the administrator, pro rata; and

(4) If a final order or judgment is issued under section 12-14.5-233 (a), to the expenses charged pursuant to section 12-14.5-232 (b) (1).

12-14.5-214. Bond required - substitute.

(a) Instead of the surety bond required by section 12-14.5-213, a provider may deliver to the administrator, in the amount required by section 12-14.5-213 (b), and, except as otherwise provided in paragraph (2) of this subsection (a), payable or available to this state and to individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agent does not comply with this part 2:

(1) (Repealed)

(2) With the approval of the administrator, an irrevocable letter of credit, issued or confirmed by a bank approved by the administrator, payable upon presentation of a certificate by the administrator stating that the provider or its agent has not complied with this part 2.

(b) If a provider furnishes a substitute pursuant to subsection (a) of this section, the provisions of section 12-14.5-213 (a), (c), (d), and (e) apply to the substitute.

12-14.5-215. Requirement of good faith.

A provider shall act in good faith in all matters under this part 2.

12-14.5-216. Customer service.

A provider that is required to be registered under this part 2 shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a counselor, debt specialist, or customer-service representative, as appropriate, during ordinary business hours.

12-14.5-217. Prerequisites for providing debt-management services.

(a) Before providing or contracting to provide debt-management services, a registered provider shall give the individual an itemized list of goods and services and the charges for each. The list shall be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement, and describe the goods and services the provider offers:

(1) Free of additional charge if the individual enters into an agreement;

(2) For a charge if the individual does not enter into an agreement; and

(3) For a charge if the individual enters into an agreement, using the following terminology, as applicable, and format:

Set-up fee____*dollar amount of fee*

Monthly service fee____*dollar amount of fee or method of determining amount*

Settlement fee____*dollar amount of fee or method of determining amount*

Goods and services in addition to those provided in connection with a plan:

_____

(item) dollar amount or method of determining amount

_____

(item) dollar amount or method of determining amount.

(b) A provider may not furnish or contract to furnish debt-management services unless the provider, through the services of a counselor or debt specialist:

(1) Provides the individual with reasonable education about the management of personal finance;

(2) Has prepared a financial analysis; and

(3) If the individual is to make regular, periodic payments:

(A) Has prepared a plan for the individual;

(B) Has made a determination, based on the provider's analysis of the information provided by the individual and otherwise available to it, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan; and

(C) Believes that each creditor of the individual listed as a participating creditor in the plan will accept payment of the individual's debts as provided in the plan.

(c) Before an individual assents to an agreement to engage in a plan, a provider shall:

(1) Provide the individual with a copy of the analysis and plan required by subsection (b) of this section in a record that identifies the provider and that the individual may keep whether or not the individual assents to the agreement;

(2) Inform the individual of the availability, at the individual's option, of assistance by a toll-free communication system or in person to discuss the financial analysis and plan required by subsection (b) of this section; and

(3) With respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, provide the individual with a list of:

(A) Creditors that the provider expects to participate in the plan and grant concessions;

(B) Creditors that the provider expects to participate in the plan but not grant concessions;

(C) Creditors that the provider expects not to participate in the plan; and

(D) All other creditors.

(d) Before an individual assents to an agreement to engage in a plan, the provider shall inform the individual, in a record that contains nothing else, that is given separately, and that the individual may keep whether or not the individual assents to the agreement:

(1) Of the name and business address of the provider;

(2) That plans are not suitable for all individuals and the individual may ask the provider about other ways, including bankruptcy, to deal with indebtedness;

(3) That establishment of a plan may adversely affect the individual's credit rating or credit scores;

(4) That nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;

(5) Unless it is not true, that the provider may receive compensation from the creditors of the individual; and

(6) That, unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the individual, even though the individual does not receive any money.

(e) If a provider may receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may hurt your credit rating or credit scores.

(3) We may receive compensation for our services from your creditors.

_____

Name and business address of provider

(f) If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, a provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may hurt your credit rating or credit scores.

_____

Name and business address of provider

(g) If a plan contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.

(2) Nonpayment of your debts under our program may:

Hurt your credit rating or credit scores;

Lead your creditors to increase finance and other charges; and

Lead your creditors to undertake activity, including lawsuits, to collect the debts.

(3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

_____

Name and business address of provider

12-14.5-218. Communication by electronic or other means.

(a) As used in this section, unless the context otherwise requires:

(1) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(2) "Federal act" means the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., as amended.

(b) A provider may satisfy the requirements of section 12-14.5-217, 12-14.5-219, or 12-14.5-227 by means of the internet or other electronic means if the provider obtains a consumer's consent in the manner provided by section 101 (c) (1) of the federal act.

(c) The disclosures and materials required by sections 12-14.5-217, 12-14.5-219, and 12-14.5-227 shall be presented in a form that is capable of being accurately reproduced for later reference.

(d) With respect to disclosure by means of an internet web site, the disclosure of the information required by section 12-14.5-217 (d) shall appear on one or more screens that:

(1) Contain no other information; and

(2) The individual must see before proceeding to assent to formation of a plan.

(e) At the time of providing the materials and agreement required by sections 12-14.5-217 (c) and (d), 12-14.5-219, and 12-14.5-227, a provider shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials, and shall comply with a request as provided in subsection (f) of this section.

(f) If a provider is requested, before the expiration of ninety days after a plan is completed or terminated, to send a written copy of the materials required by section 12-14.5-217 (c) and (d), 12-14.5-219, or 12-14.5-227, the provider shall send them at no charge within three business days after the request, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than ninety days after a plan is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

(g) A provider that maintains an internet web site shall disclose on the home page of its web site or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

(1) Its name and all names under which it does business;

(2) Its principal business address, telephone number, and electronic mail address, if any; and

(3) The names of its principal officers.

(h) Subject to subsection (i) of this section, if a consumer who has consented to electronic communication in the manner provided by section 101 of the federal act withdraws consent as provided in the federal act, a provider may terminate its agreement with the consumer.

(i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection (h) of this section, it shall notify the consumer that it will terminate the agreement unless the consumer, within thirty days after receiving the notification, consents to electronic communication in the manner provided in section 101 (c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by section 12-14.5-219 (a) (6) (G).

12-14.5-219. Form and contents of agreement.

(a) An agreement shall:

(1) Be in a record;

(2) Be dated and signed by the provider and the individual;

(3) Include the name of the individual and the address where the individual resides;

(4) Include the name, business address, and telephone number of the provider;

(5) Be delivered to the individual immediately upon formation of the agreement; and

(6) Disclose:

(A) The services to be provided;

(B) In a clear and conspicuous manner, the amount, percentage, or method of determining the amount, of all fees, individually itemized, to be paid by the individual, using only the terminology contained in section 12-14.5-223;

(C) The schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, an estimate of the date of the final payment, and an estimate of the total of all payments to be made under the plan;

(C.5) In a clear and conspicuous manner, the following information:

(i) The amount of time necessary to achieve the represented results;

(ii) If the plan includes a settlement offer to any of the individual's creditors or debt collectors, the time by which the provider will make a bona fide settlement offer to each of them and the amount of money or the percentage of each outstanding debt that the individual must accumulate before the provider will make a bona fide settlement offer to each of them, and

(iii) If the provider requests or requires the individual to place funds in an account at an insured financial institution, that the individual owns the funds held in the account, the individual may withdraw from the plan at any time without penalty, and, if the individual withdraws, the individual must receive all funds in the account, other than funds earned by the provider in compliance with section 12-14.5-222 (h);

(D) If a plan provides for regular periodic payments to creditors:

(i) Each creditor of the individual to which payment will be made, the amount owed to each creditor, and any concessions the provider reasonably believes each creditor will offer; and

(ii) The schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;

(E) If the provider holds money on behalf of the individual, each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;

(F) How the provider will comply with its obligations under section 12-14.5-227 (a);

(G) If the provider holds money on behalf of the individual, that the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;

(H) That the individual may cancel the agreement as provided in section 12-14.5-220;

(I) That the individual may contact the administrator with any questions or complaints regarding the provider; and

(J) The address, telephone number, and internet address or web site of the administrator.

(b) For purposes of paragraph (5) of subsection (a) of this section, delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print it, and the individual is notified that it is available.

(c) If the administrator supplies the provider with any information required under subparagraph (J) of paragraph (6) of subsection (a) of this section, the provider may comply with that requirement only by disclosing the information supplied by the administrator.

(d) An agreement shall provide that:

(1) The individual has a right to terminate the agreement at any time, without penalty or obligation, by giving the provider written or electronic notice, in which event:

(A) The provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt; and

(B) (Repealed)

(C) All powers of attorney granted by the individual to the provider are revoked and ineffective;

(2) The individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the administrator any financial records relating to the trust account; and

(3) The provider will notify the individual within five days after learning of a creditor's decision to reject or withdraw from a plan and that this notice will include:

(A) The identity of the creditor; and

(B) The right of the individual to modify or terminate the agreement.

(e) (Repealed)

(f) An agreement may not:

(1) Provide for application of the law of any jurisdiction other than the United States and this state;

(2) Except as permitted by the uniform arbitration act, part 2 of article 22 of title 13, C.R.S., contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this part 2;

(3) Contain a provision that restricts the individual's remedies under this part 2 or law other than this part 2; or

(4) Contain a provision that:

(A) Limits or releases the liability of any person for not performing the agreement or for violating this part 2; or

(B) Indemnifies any person for liability arising under the agreement or this part 2.

(g) All rights and obligations specified in subsection (d) of this section and section 12-14.5-220 exist even if not provided in the agreement. A provision in an agreement that violates subsection (d), (e), or (f) of this section is void.

12-14.5-220. Cancellation of agreement - waiver.

(a) An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection (b) of this section or section 12-14.5-219 or 12-14.5-228, in which event the individual may cancel the agreement within thirty days after the individual assents to it. To exercise the right to cancel, the individual shall give notice in a record to the provider. Notice by mail is given when mailed.

(b) An agreement shall be accompanied by a separate form that contains in bold-faced type, surrounded by bold black lines:

Notice of Right to Cancel

You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.

To cancel this agreement during this period, send an e-mail to *(E-mail address of provider)* or mail or deliver a signed, dated copy of this notice, or any other written notice to *(Name of provider)* at *(Address of provider)* before midnight on *(Date)*.

If you cancel this agreement within the 3-day period, we will refund all money you already have paid us.

You also may terminate this agreement at any later time, but we are not required to refund fees you have paid us.

I cancel this agreement,

_____

Print your name

_____

Signature

_____

Date

(c) If a personal financial emergency necessitates the disbursement of an individual's money to one or more of the individual's creditors before the expiration of three days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual shall send or deliver a signed, dated statement in the individual's own words describing the circumstances that necessitate a waiver. The waiver shall explicitly waive the right to cancel. A waiver by means of a standard form record is void.

12-14.5-221. Required language.

Unless the administrator, by rule, provides otherwise, the disclosures and documents required by this part 2 shall be in English. If a provider communicates with an individual primarily in a language other than English, the provider shall furnish a translation into the other language of the disclosures and documents required by this part 2.

12-14.5-222. Trust account.

(a) All money paid to a provider by or on behalf of an individual pursuant to a plan for distribution to creditors is held in trust. Within two business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

(b) Money held in trust by a provider is not property of the provider or its designee. The money is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider received money, to the extent that the money has not been disbursed to creditors of the individual.

(c) A provider shall:

(1) Maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(2) Disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement; except that:

(A) The provider may delay payment to the extent that a payment by the individual is not final; and

(B) If a plan provides for regular periodic payments to creditors, the disbursement shall comply with the due dates established by each creditor; and

(3) Promptly correct any payments that are not made or that are misdirected as a result of an error by the provider or other person in control of the trust account and reimburse the individual for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

(d) A provider may not commingle money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services with money of other persons.

(e) A trust account shall at all times have a cash balance equal to the sum of the balances of each individual's account.

(f) If a provider has established a trust account pursuant to subsection (a) of this section, the provider shall reconcile the trust account at least once a month. The reconciliation shall compare the cash balance in the trust account with the sum of the balances in each individual's account. If the provider or its designee has more than one trust account, each trust account shall be individually reconciled.

(g) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the administrator by a method approved by the administrator. Unless the administrator by rule provides otherwise, within five days thereafter, the provider shall give notice to the administrator describing the remedial action taken or to be taken.

(h) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual that has not been paid to creditors, less fees that are payable to the provider under section 12-14.5-223.

(i) Before relocating a trust account from one bank to another, a provider shall inform the administrator of the name, business address, and telephone number of the new bank. As soon as practicable, the provider shall inform the administrator of the account number of the trust account at the new bank.

12-14.5-223. Fees and other charges.

(a) A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.

(b) A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with sections 12-14.5-219 and 12-14.5-228.

(c) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this subsection (c) and section 12-14.5-228 (d). The administrator may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.

(d) The following rules apply:

(1) If an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge:

(A) A fee not exceeding fifty dollars for consultation, obtaining a credit report, and setting up an account; and

(B) A monthly service fee, not to exceed ten dollars times the number of creditors remaining in a plan at the time the fee is assessed, but not more than fifty dollars in any month.

(2) If an individual assents to a plan that contemplates that creditors or debt collectors will settle debts for less than the principal amount of the debt:

(A) A provider may not request or receive payment of any fee or consideration until and unless:

(i) The provider has settled the terms of at least one debt pursuant to a settlement agreement or other valid contractual agreement executed by the individual;

(ii) The individual has made at least one payment pursuant to that settlement agreement or other valid contractual agreement between the individual and the creditor or debt collector; and

(iii) The fee or consideration either: Bears the same proportional relationship to the total fee for settling the terms of the entire debt balance as the individual debt amount

bears to the entire debt amount, in which case the individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or is a percentage of the amount saved as a result of the settlement. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the plan and the amount actually paid to satisfy the debt.

(B) (Repealed)

(C) (Repealed)

(D) Notwithstanding subparagraph (A) of this paragraph (2), no individual who completes all of his or her obligations under the agreement may be charged fees such that those fees, when added to the aggregate of offers of settlement obtained by the provider for the debtor, exceeds the principal amount of the debt.

(3) A provider may not impose or receive fees under both paragraphs (1) and (2) of this subsection (d).

(4) Except as otherwise provided in section 12-14.5-228 (d), if an individual does not assent to an agreement, a provider may receive for educational and counseling services it provides to the individual a fee not exceeding one hundred dollars or, with the approval of the administrator, a larger fee. The administrator may approve a fee larger than one hundred dollars if the nature and extent of the educational and counseling services warrant the larger fee.

(5) (Repealed)

(e) If, before the expiration of ninety days after the completion or termination of educational or counseling services, an individual assents to an agreement, the provider shall refund to the individual any fee paid pursuant to paragraph (4) of subsection (d) of this section.

(f) If a payment to a provider by an individual under this part 2 is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of twenty-five dollars and the amount permitted by law other than this part 2.

12-14.5-224. Voluntary contributions.

A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until thirty days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under section 12-14.5-223.

12-14.5-225. Voidable agreements.

(a) If a provider imposes a fee or other charge or receives money or other payments not authorized by section 12-14.5-223 or 12-14.5-224, the individual may void the agreement and recover as provided in section 12-14.5-235.

(b) If a provider is not registered as required by this part 2 when an individual assents to an agreement, the agreement is voidable by the individual.

(c) If an individual voids an agreement under subsection (b) of this section, the provider does not have a claim against the individual for breach of contract or for restitution.

12-14.5-226. Termination of agreements.

(a) If an individual who has entered into an agreement fails for sixty days to make payments required by the agreement, a provider may terminate the agreement.

(b) If a provider or an individual terminates an agreement, the provider shall immediately return to the individual:

(1) Any money of the individual held in trust for the benefit of the individual; and

(2) (Repealed)

12-14.5-227. Periodic reports - retention of records.

(a) A provider shall provide the accounting required by subsection (b) of this section:

(1) Upon cancellation or termination of an agreement; and

(2) Before cancellation or termination of any agreement:

(A) At least once each month; and

(B) Within five business days after a request by an individual, but the provider need not comply with more than one request from an individual in any calendar month.

(b) A provider, in a record, shall provide each individual for whom it has established a plan an accounting of the following information:

(1) The amount of money received from the individual since the last report;

(2) The amounts and dates of disbursement made on the individual's behalf, or by the individual upon the direction of the provider, since the last report to each creditor listed in the plan;

(3) The amounts deducted from the amount received from the individual;

(4) The amount held in reserve; and

(5) If, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:

(A) The total amount and terms of the settlement;

(B) The amount of the debt when the individual assented to the plan;

(C) The amount of the debt when the creditor agreed to the settlement; and

(D) The calculation of a settlement fee.

(c) A provider shall maintain records for each individual for whom it provides debt-management services for five years after the final payment made by the individual and produce a copy of them to the individual within a reasonable time after a request for them. The provider may use electronic or other means of storage of the records.

12-14.5-228. Prohibited acts and practices.

(a) A provider may not, directly or indirectly:

(1) Misappropriate or misapply money held in trust;

(2) Settle a debt on behalf of an individual without the individual’s agreement to the settlement terms pursuant to a settlement agreement or other valid contractual agreement executed by the individual;

(3) (Repealed)

(4) Exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

(5) Initiate a transfer from an individual's account at a bank or with another person unless the transfer is:

(A) A return of money to the individual; or

(B) Before termination of an agreement, properly authorized by the agreement and this part 2, and for:

(i) Payment to one or more creditors pursuant to a plan; or

(ii) Payment of a fee;

(6) Offer a gift or bonus, premium, reward, or other compensation to an individual for executing an agreement;

(7) Offer, pay, or give a gift or bonus, premium, reward, or other compensation to a person for referring a prospective customer, except for a sales lead, if the person making the referral has a financial interest in the outcome of debt-management services provided

to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;

(8) Receive a bonus, commission, or other benefit for referring an individual to a person;

(9) Structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;

(10) Compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;

(11) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt;

(12) Make a representation that:

(A) The provider will furnish money to pay bills or prevent attachments;

(B) Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or

(C) Participation in a plan will or may prevent litigation, collection activity, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;

(13) Misrepresent that it is authorized or competent to furnish legal advice or perform legal services;

(14) Represent that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit under the law of the state in which it was formed or that it is a tax-exempt entity unless it has received certification of tax-exempt status from the federal internal revenue service; except that, if the provider represents that it is a not-for-profit entity and the provider does not have tax-exempt status under section 501 (c) (3) of the federal “Internal Revenue Code of 1986”, as amended, the provide shall state, in a clear and conspicuous manner and in close proximity to the representation: “We are not an educational, charitable, or religious organization granted tax-exempt status by the Internal Revenue Service.”

(15) Take a confession of judgment or power of attorney to confess judgment against an individual;

(16) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information; or

(17) Advise, encourage, or suggest to the individual not to make a payment to creditors under the plan.

(b) If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:

(1) Purchase a debt or obligation of the individual;

(2) Receive from or on behalf of the individual:

(A) A promissory note or other negotiable instrument other than a check or a demand draft; or

(B) A post-dated check or demand draft;

(3) Lend money or provide credit to the individual, except as a deferral of a settlement fee at no additional expense to the individual;

(4) Obtain a mortgage or other security interest from any person in connection with the services provided to the individual;

(5) Except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:

(A) The administrator, upon proper demand;

(B) A creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or

(C) The extent necessary to administer the plan;

(6) Except as otherwise provided in section 12-14.5-223 (d) (2), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

(7) Charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the internet, or any other matter not directly related to debt-management services or educational services concerning personal finance; or

(8) Furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law.

(c) This part 2 does not authorize any person to engage in the practice of law.

(d) A provider may not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program.

(e) Unless a person supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a

provider may not purchase goods, services, or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:

(1) Owns more than ten percent of the person; or

(2) Is an employee or affiliate of the person.

12-14.5-229. Notice of litigation.

No later than thirty days after a provider has been served with notice of a civil action for violation of this part 2 by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served, the provider shall notify the administrator in a record that it has been sued.

12-14.5-230. Advertising.

A provider that advertises debt-management services shall disclose, in an easily comprehensible manner, the information specified in section 12-14.5-217 (d) (3) and (d) (4).

12-14.5-231. Liability for the conduct of other persons.

If a provider delegates any of its duties or obligations under an agreement or this part 2 to another person, including an independent contractor, the provider is liable for conduct of the person that, if done by the provider, would violate the agreement or this part 2.

12-14.5-232. Powers of administrator - rules.

(a) The administrator may act on its own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this part 2, and seek or provide remedies as provided in this part 2.

(b) The administrator may investigate and examine, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt-management services, or a person to which a provider has delegated its obligations under an agreement or this part 2, to determine compliance with this part 2. Information that identifies individuals who have agreements with the provider shall not be disclosed to the public. In connection with the investigation, the administrator may:

(1) Charge the person the reasonable expenses necessarily incurred to conduct the examination;

(2) Require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated; and

(3) Seek a court order authorizing seizure from a bank at which the person maintains a trust account required by section 12-14.5-222, any or all money, books, records, accounts, and other property of the provider that is in the control of the bank and relates to individuals who reside in this state.

(c) The administrator may adopt rules to implement the provisions of this part 2 in accordance with section 24-4-103, C.R.S.

(d) The administrator may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including information obtained during an examination of the provider.

(e) The administrator, by rule, shall establish reasonable fees to be paid by providers for the expense of administering this part 2.

(f) (Repealed)

(g) (Repealed)

12-14.5-233. Administrative remedies.

(a) The administrator may enforce this part 2 and rules adopted under this part 2 by taking one or more of the following actions:

(1) Ordering a provider or a director, employee, or other agent of a provider to cease and desist from any violations;

(2) Ordering a provider or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation;

(3) Imposing on a provider or a person that has caused a violation a civil penalty not exceeding ten thousand dollars for each violation;

(4) Prosecuting a civil action to:

(A) Enforce an order; or

(B) Obtain restitution, a civil penalty not to exceed ten thousand dollars per violation, an injunction, or other equitable relief;

(5) Intervening in an action brought under section 12-14.5-235.

(b) If a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under paragraph (1) or (2) of subsection (a) of this section, the administrator or court may impose a civil penalty not exceeding twenty thousand dollars for each violation.

(c) The administrator may maintain an action to enforce this part 2 in any county.

(d) The administrator may recover the reasonable costs of enforcing this part 2 under subsections (a) to (c) of this section, including attorney fees based on the hours

reasonably expended and the hourly rates for attorneys of comparable experience in the community.

(e) In determining the amount of a civil penalty to impose under subsection (a) or (b) of this section, the administrator or the court shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the administrator or the court considers relevant to the determination of the civil penalty.

12-14.5-234. Suspension, revocation, or nonrenewal of registration.

(a) In this section, "insolvent" means:

(1) Having generally ceased to pay debts in the ordinary course of business other than as a result of good-faith dispute;

(2) Being unable to pay debts as they become due; or

(3) Being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. sec. 101 et seq., as amended.

(b) In addition to the remedies otherwise available under this article, the administrator may suspend, revoke, or deny renewal of a provider's registration if:

(1) A fact or condition exists that, if it had existed when the registrant applied for registration as a provider, would have been a reason for denying registration;

(2) The provider has committed a material violation of this part 2 or a rule or order of the administrator under this part 2;

(3) The provider is insolvent;

(4) The provider or an employee or affiliate of the provider has refused to permit the administrator to make an examination authorized by this part 2, failed to comply with section 12-14.5-232 (b) (2) within fifteen days after request, or made a material misrepresentation or omission in complying with section 12-14.5-232 (b) (2); or

(5) The provider has not responded within a reasonable time and in an appropriate manner to communications from the administrator.

(c) If a provider does not comply with section 12-14.5-222 (f) or if the administrator otherwise finds that the public health, safety, or general welfare requires emergency action, the administrator may order a summary suspension of the provider's registration, effective on the date specified in the order.

(d) If the administrator suspends, revokes, or denies renewal of the registration of a provider, the administrator may seek a court order authorizing seizure of any or all of the

money in a trust account required by section 12-14.5-222, books, records, accounts, and other property of the provider that are located in this state.

(e) If the administrator suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to section 24-4-105, C.R.S.

12-14.5-235. Private enforcement.

(a) If an individual voids an agreement pursuant to section 12-14.5-225 (b), the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under paragraphs (3) and (4) of subsection (c) of this section.

(b) If an individual voids an agreement pursuant to section 12-14.5-225 (a), the individual may recover in a civil action three times the total amount of the fees, charges, money, and payments made by the individual to the provider, in addition to the recovery under paragraph (4) of subsection (c) of this section.

(c) Subject to subsection (d) of this section, an individual with respect to whom a provider violates this part 2 may recover in a civil action from the provider and any person that caused the violation:

(1) Compensatory damages for injury, including noneconomic injury, caused by the violation;

(2) Except as otherwise provided in subsection (d) of this section, with respect to a violation of section 12-14.5-217, 12-14.5-219 to 12-14.5-224, 12-14.5-227, or 12-14.5-228 (a), (b), or (d), the greater of the amount recoverable under paragraph (1) of this subsection (c) or five thousand dollars;

(3) Punitive damages; and

(4) Reasonable attorney fees and costs.

(d) In a class action, except for a violation of section 12-14.5-228 (a) (5), the minimum damages provided in paragraph (2) of subsection (c) of this section do not apply.

(e) In addition to the remedy available under subsection (c) of this section, if a provider violates an individual's rights under section 12-14.5-220, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.

(f) A provider is not liable under this section for a violation of this part 2 if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this part 2 is not a good-faith error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this part 2, the defense provided by this subsection (f)

is not available unless the provider refunds the excess within two business days after learning of the violation.

(g) The administrator shall assist an individual in enforcing a judgment against the surety bond or other security provided under section 12-14.5-213 or 12-14.5-214.

12-14.5-236. Violation of unfair or deceptive practices statute.

If an act or practice of a provider violates both this part 2 and section 6-1-105, C.R.S., an individual may not recover under both for the same act or practice.

12-14.5-237. Statute of limitations.

(a) An action or proceeding brought pursuant to section 12-14.5-233 (a), (b), or (c) shall be commenced within four years after the conduct that is the basis of the administrator's complaint.

(b) An action brought pursuant to section 12-14.5-235 shall be commenced within two years after the latest of:

(1) The individual's last transmission of money to a provider;

(2) The individual's last transmission of money to a creditor at the direction of the provider;

(3) The provider's last disbursement to a creditor of the individual;

(4) The provider's last accounting to the individual pursuant to section 12-14.5-227 (a);

(5) The date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or

(6) Termination of actions or proceedings by the administrator with respect to a violation of this part 2.

(c) The period prescribed in paragraph (5) of subsection (b) of this section is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this part 2 to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant under this part 2.

12-14.5-238. Uniformity of application and construction.

In applying and construing this part 2, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

12-14.5-239. Relation to federal "Electronic Signatures in Global and National Commerce Act".

This part 2 modifies, limits, and supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify,

limit, or supersede section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

12-14.5-240. Transitional provisions - application to existing transactions.

Transactions entered into before January 1, 2008, and the rights, duties, and interests resulting from them may be completed, terminated, or enforced as required or permitted by a law amended, repealed, or modified by this part 2 as though the amendment, repeal, or modification had not occurred.

12-14.5-241. Severability.

If any provision of this part 2 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part 2 that can be given effect without the invalid provision or application, and to this end the provisions of this part 2 are severable.

12-14.5-242. Repeal of part.

This part 2 is repealed, effective July 1, 2015. Prior to such repeal, the functions of the administrator pursuant to this part 2 and the registration of providers shall be reviewed as provided for in section 24-34-104, C.R.S.

UNIFORM CONSUMER CREDIT CODE RULES

Rule 1 **Right to Rescind Certain Transactions**

(repealed effective November 1, 2000).

Rule 2 **Limitations on Garnishment of Earnings for Pay Periods Other Than a Week**

(a) For purposes of § 5-5-106(2)(b), C.R.S., the "multiple" of the federal minimum hourly wage equivalent to that applicable to the disposable earnings for one week is represented by the following formula:

The number of workweeks, or fractions thereof, times 30 times the applicable federal minimum wage. For the purpose of this formula, a calendar month is considered to consist of 4 1/3 workweeks.

Rule 3 **Permissible Additional Charges – Single Premium Non-Credit Insurance**

(a) A creditor may sell single premium non-credit insurance in connection with a consumer credit transaction provided that:

(1) The insurance coverage is not a factor in the approval of credit and this fact is clearly disclosed in writing to the consumer.

(2) In order to obtain the insurance the consumer gives specific affirmative written indication of the consumer's desire to purchase the insurance after receiving written disclosure of the cost.

(3) The insurance policy allows the insured consumer thirty (30) days to cancel the policy, without cost.

(4) If the insured does cancel the policy within the thirty (30) day period the premium shall be returned directly to the insured.

(5) If the insured makes a valid claim the benefits shall be paid directly to the insured, the designated beneficiaries, or the estate, but not to the creditor.

(b) If the insurance sold meets both the definition of non-credit insurance in part (c) of this rule and all of the five conditions listed above, the charge for such insurance may be excluded as a permissible additional charge from the finance charge.

(c) "Non-credit insurance" means insurance conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, and are of a type that is not for credit.

Rule 4 **Permissible Additional Charges - Involuntary Unemployment Insurance Premiums**

(a) Pursuant to § 5-2-202(1)(d), C.R.S., the administrator finds that involuntary unemployment insurance sold in conformity with the provisions of this rule is a benefit to the borrower and that the charges are reasonable in relation to the benefits and are not of a type for credit.

(b) Premiums for involuntary unemployment insurance are permissible additional charges if all of the following conditions are met fully:

1. The insurance coverage is not a factor in the extension of credit and this fact is clearly disclosed in writing to the consumer.

2. The premium for the initial term of insurance coverage is disclosed. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in revolving credit transactions.

3. The number of installment or other payments payable by the insurance covering the consumer and any limitation on the amount of such payments are disclosed clearly in writing to the consumer.

4. The creditor secures that consumer's consent for a specific amount and cost of insurance if sold by the creditor before inclusion of the insurance premium in any quoted installment or other payment or in any document prepared for closing. In order to obtain the insurance the consumer gives specific written affirmative indication of the consumer's desire to purchase the insurance after receiving the disclosures specified in this rule.

5. The insurance policy allows the insured consumer to cancel the policy within thirty (30) days with a refund of all of the premiums and without cost, and to cancel the policy at any time thereafter with a refund of unearned premiums, and the insured receives written disclosure of these facts.

6. If the insured does cancel the policy the premium refund is returned directly to the consumer or credited to the consumer's account as a partial prepayment of the indebtedness.

7. The sale of the insurance fully complies with all federal and Colorado laws and regulations concerning consumer credit insurance, including without limitation parts 1 and 2, article 4, title 5, C.R.S.

8. The consumer receives written disclosure of the length of any deductible period before the insurance benefits are payable and whether the benefits are retroactive to the commencement of involuntary unemployment.

9. The creditor makes a prompt refund to the consumer of all applicable finance charges calculated according to the actuarial method based upon the refunded premiums and the terms of the transaction if the

creditor financed the premiums in a precomputed transaction, the consumer cancels the insurance, and the creditor refunds the premiums by credit to the consumer's account.

10. In the event the creditor sells both involuntary unemployment insurance and another form of consumer credit insurance, neither policy provides for a denial of benefits because of pre-existing coverage by the other policy if insured events under both policies lead to simultaneous claims, and benefits are coordinated until all liability is paid in full.

11. In the event of either voluntary or involuntary prepayment of the indebtedness, a refund of unearned premiums is made in accordance with article 4, title 5, C.R.S.

12. If the policy provides for a waiting period after the effective date of the policy during which no claim may be made, that fact is disclosed in writing to the consumer.

(c) "Involuntary unemployment insurance" means insurance providing the insured consumer with coverage for consumer credit repayment obligations for a period or periods during which the consumer is involuntarily unemployed. "Involuntary unemployment insurance" includes only insurance at least providing benefits for loss of employment income caused by individual or mass layoff, general strike, termination by employer, unionized labor dispute, and lockout. "Involuntary unemployment insurance" does not include insurance as to which a finance charge is imposed and provided in relation to a credit transaction in which a payment is scheduled more than ten (10) years after the extension of credit.

Rule 5 **Class of Transactions Exempt From the Balloon Payment Refinance Provision**

The class of consumer credit transactions that provides for periodic payments of interest only throughout the term of the consumer credit sale or loan and that has a scheduled payment more than twice as large as the average of all other regularly scheduled payments is not subject to the disclosure and right to refinance provisions of § 5-3-208, C.R.S. However, if the transaction, as originally scheduled, does not provide for periodic payments sufficient to pay all the interest due to the date of each scheduled payment then the transaction is subject to the provisions of § 5-3-208, C.R.S.

Rule 6 **Actuarial Method**

For all purposes under the Uniform Consumer Credit Code, as far as practicable, "actuarial method" shall be that set forth in the federal Truth in Lending Act and any regulation thereunder, including 12 C.F.R. 226, appendix J (Regulation Z, appendix J - Annual Percentage Rate Computations for Closed-End Credit Transactions, promulgated by the Board of Governors of the Federal Reserve System). "Actuarial method" shall include the United States Rule method set forth in 12 C.F.R. 226, appendix J (a)(3).

Rule 7 **Multiple Agreements and Post Dated Checks**

(repealed effective November 1, 2000).

Rule 8 **Permissible Additional Charges - Guaranteed Automobile Protection**

A fee or charge for guaranteed automobile protection ("GAP") may be contracted for and received as an additional charge if all of the conditions listed below are met. Failure to comply with all provisions of this rule shall mean that the fee or charge for GAP is not a permitted additional charge under Uniform Consumer Credit Code ("UCCC") § 5-2-202(1)(d). This rule is inapplicable to GAP included in consumer leases, to other debt cancellation agreements in consumer credit sales or consumer loans that do not meet this definition, and to transactions not subject to the UCCC.

(a) GAP means an agreement structured as either an insurance policy or a contractual term sold or written in consumer credit sales [5-1-301(11)] or consumer loan transactions [5-1-301(15)] that relieves the consumer of liability for the deficiency balance remaining after the payment of all insurance proceeds (or deducting the amount that would have been paid if the contractually required insurance had been maintained at the time of the loss) for property damage upon the total loss of the consumer's automobile(s) that was collateral securing the credit sale or consumer loan, whether the loss occurred from the total destruction of the vehicle, the theft of the vehicle, or both. "Automobile" includes any motor vehicle that may be used as collateral securing a consumer credit transaction.

(b) The consumer must provide affirmative written authorization for the purchase of GAP after receiving written notice of the following in bold face type before credit is extended:

(1) that the purchase of GAP is not required in order to obtain the credit or any particular or favorable credit terms;

(2) the fee or premium for GAP;

(3) that the consumer may wish to consult an insurance agent to determine whether similar coverage may be obtained and at what cost;

(4) that GAP benefits may decrease over the term of the consumer credit sale or consumer loan;

(5) that the consumer may cancel GAP for any or no reason within thirty (30) days after GAP was purchased and receive a full refund of the GAP fee or premium so long as no loss or event covered by GAP has occurred; and,

(6) GAP is not a substitute for collision or property damage insurance.

(c) At the time the consumer provides affirmative written authorization to purchase GAP, the creditor shall provide the consumer with a separate written cancellation form. The form shall:

(1) include the name and mailing address to be used to cancel GAP;

(2) state clearly and conspicuously that the consumer has an unconditional right to cancel GAP for a full refund within thirty (30) days after it was purchased; and,

(3) state that in order to cancel GAP, the consumer must complete and return the form or send any other written notice of cancellation to the address provided postmarked no later than thirty (30) days after GAP was purchased.

(d) At the time the consumer provides affirmative written authorization to purchase GAP, the creditor must deliver to the consumer the GAP insurance policy, certificate, or written description of GAP's benefits, terms, conditions, and exclusions and the procedure and timing to be followed to make a claim after a total loss.

(e) GAP must pay or forgive the deficiency balance owed by the consumer at the time of the total loss with the exception of amounts previously owed for unpaid installments, legally permitted delinquency fees, fees for the return or dishonor of checks or other instruments tendered as payment, premiums for creditor-imposed property damage insurance, and deferral fees. GAP must pay or forgive the deficiency balance that would have been owed if the consumer had maintained property damage insurance on the automobile (even if the consumer has not done so) or if the creditor has purchased property damage insurance for the automobile and added it to the amount of the debt pursuant to UCCC § 5-2-209, C.R.S.

(f) As part of payment of or relief from liability of the deficiency balance, GAP must provide the consumer with a full refund or credit of the amount of the consumer's deductible for property damage insurance up to an amount including five hundred ($500) dollars.

(g) GAP may not be sold pursuant to this rule if (1) the consumer; (2) the credit terms including but not limited to cash price, automobile value or amount financed; or, (3) the automobile used as collateral for the credit transaction, do not qualify for or conflict with any restrictions or limitations of the GAP policy or contract conditions. For example:

(1) if GAP will not provide coverage or debt cancellation for identified automobile makes and models frequently subject to theft or to consumers living in certain neighborhoods, it may not be sold pursuant to this rule if the automobile securing the loan is one of the identified makes and models or if the consumer lives in an excluded neighborhood; or,

(2) if GAP will not provide coverage or debt cancellation if the automobile sale price is more than the manufacturer's suggested retail price ("MSRP") or if the retail value of the automobile exceeds 120% of "Blue Book" value, it may not be sold pursuant to this rule if the price exceeds the MSRP or if the loan to value ratio is 125%.

In addition, GAP may not be sold pursuant to this rule if the transaction would be unconscionable pursuant to UCCC § 5-4-106, 5-5-109, or 5-6-112, C.R.S.

(h) If the consumer credit sale or consumer loan is prepaid prior to maturity or the vehicle is no longer in the consumer's possession due to the creditor's

lawful repossession and disposition of the collateral, and if no GAP claim has been made, the creditor must refund to the consumer the unearned fee or premium paid for GAP. If GAP was provided as a contractual term, the refund shall be made using a pro-rata method. If GAP is determined to be insurance, the refund method used shall be any method authorized under applicable insurance statutes, rules, or interpretations of the Colorado Division of Insurance.

(i) Only one fee or charge for GAP may be contracted for and received regardless of the number of co-borrowers, co-signers, or guarantors in the credit transaction. In the event that GAP has been sold and a valid claim has been made, the creditor may not seek indemnification from the consumer, co-borrowers, co-signers, or guarantors.

(j) A consumer shall have ninety (90) days after the loss settlement from any property damage insurance or from the date the creditor notifies the consumer of any deficiency balance owed, whichever is later, to file a GAP claim or seek debt cancellation from the creditor.

(k) The maximum fee that may be charged for GAP shall not exceed the following:

$300 or 2% of the amount financed, whichever is higher.

This provision (k) shall not apply to any GAP insurance that is subject to regulation by the Colorado Division of Insurance.

(l) Every provision of this rule applies equally to any assignee or holder of a consumer credit sale or consumer loan containing a fee or charge for GAP. No creditor, assignee, or holder shall have any subrogation rights against the consumer.

(m) Every consumer credit sale or consumer loan that includes a fee or premium for GAP shall contain in the written agreement signed by the consumer a provision substantially similar to the following:

If this transaction contains a fee or premium for guaranteed automobile protection, all holders and assignees of this consumer credit transaction are subject to all claims and defenses which the consumer could assert against the original creditor resulting from the consumer's purchase of guaranteed automobile protection.

Rule 9 **Supervised Lender License Applications, Surety Bonds, and Changes of Ownership**

(a) Application.

(1) An application for a supervised lender's license shall be considered "filed" for purposes of Uniform Consumer Credit Code § 5-2-302(3) once all information required by the Administrator from the applicant has been received.

(2) If the applicant has not filed all material requested within two (2) months after being notified by the Administrator of incomplete or missing information, the application may be denied.

(b) Financial Responsibility.

(1) The references to financial responsibility in Uniform Consumer Credit Code ("UCCC") § 5-2-302(2) and 5-2-304(2), C.R.S. shall be satisfied by one or more of the forms permitted by this rule in an amount based on the volume of Colorado supervised loans made and taken by assignment in the prior calendar year as reflected in the table below. If no supervised loans were made or taken by assignment in the prior calendar year, and the supervised lender is required by law to maintain a supervised lender's license, the lender shall maintain the minimum amount of financial responsibility required by this rule. In lieu of filing and maintaining evidence of financial responsibility for each master and branch licensed location, the applicant/licensee may maintain one form of financial responsibility for all licensed locations but the aggregate dollar amount required for all licensed locations need not exceed $250,000.

Volume of Supervised Loans Made and Taken by Assignment in Prior Calendar Year (excluding finance charges)	**Amount per License**
0 to $500,000 (or initial application)	$15,000
$500,001 to $1,000,000	$20,000
>$1,000,000	$25,000

(A) Surety Bond

(I) The bond shall be in the manner prescribed by the Administrator, shall be issued by a surety licensed by the Colorado Commissioner of Insurance to transact the business of fidelity and surety insurance, and shall contain original signatures. The bond shall be in favor of the Attorney General of the State of Colorado for use by the Administrator of the Uniform Consumer Credit Code on behalf of the People of the State of Colorado. The bond shall be conditioned upon the compliance by the licensee with all provisions of the UCCC and rules and regulations lawfully adopted thereunder and the payment to the UCCC Administrator or to any person(s) who may have a cause of action against the licensee under the UCCC, of any and all amounts of money that may become due or owing to the UCCC Administrator or to such person(s) from the licensee.

(II) Should the surety cancel or reduce the penal sum of the bond, the surety must immediately provide written notification to the Administrator of the UCCC. The bond may be canceled or

reduced no sooner than thirty (30) days after receipt of the cancellation or reduction notice by the Administrator. Upon receipt of a notice of cancellation or reduction of a bond, the Administrator must mail written notification to the licensee of its obligation to file with the administrator, on or before the effective date of cancellation or reduction, a new surety bond, rider or other document increasing the bond, or notice from the surety rescinding the cancellation or reduction.

(III) The bond must provide that the liability of the surety upon the bond shall cease no sooner than two (2) years after the surrender, revocation, or expiration of the license.

(B) Cash Surety - evidence of a savings account, deposit, or certificate of deposit in or issued by a state bank, national bank, or savings and loan association doing business in Colorado, containing original signatures, and assigned to the Administrator of the Colorado Uniform Consumer Credit Code for use by the People of the State of Colorado. Interest and dividends earned on the principal amount may be retained by the applicant/licensee. Cash surety assignments may not be released prior to two (2) years after the surrender, revocation, or expiration of the license. The cash surety must comply with section 11-35-101, C.R.S. (alternatives to surety bonds permitted - requirements).

(C) Letter of credit - an irrevocable letter of credit containing original signatures and written in favor of the Administrator of the Colorado Uniform Consumer Credit Code for use by the People of the State of Colorado issued by a state bank, national bank, or savings and loan association doing business in Colorado. The letter of credit shall be for a term of two years and must provide that the liability of the issuer shall cease no sooner than two (2) years after the surrender, revocation, or expiration of the license. The letter of credit must comply with section 11-35-101.5, C.R.S. (irrevocable letter of credit permitted - requirements).

(c) Change of Ownership.

(1) Within thirty (30) days after a change of ownership of a licensed supervised lender consisting of 50% or more of the membership interests in a limited liability company or 50% or more of the voting stock of a corporation, in any one transaction or a cumulative change of ownership of fifty percent or more from the date of the issuance of the license or from the date of the last notification and payment of the annual license fee, the licensee shall provide written notification of the change. The Administrator may require the licensee to provide additional information or file a new license application. If the Administrator requests additional information or a new license application, the licensee may continue to operate as a supervised lender until notified that the change is approved. This requirement shall not apply to corporations or other entities filing

registration statements and periodic current reports under the federal Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.].

(2) At least fifteen (15) days prior to a change of ownership of a licensed supervised lender consisting of a change of partner or sole proprietor, the licensee shall reapply for a new license in the manner prescribed by the Administrator. The licensee may continue to operate as a licensed supervised lender until the Administrator has acted on the license application.

Rule 10 **Records to be Maintained by Creditors**

(The amended portions of Rule 10(a)7, 17, 18, 19, and 20 are effective November 29, 2010.)

(a) A creditor must maintain and make available records for compliance examinations and investigations that enable the Administrator to determine that the creditor is in compliance with the Colorado Uniform Consumer Credit Code ("UCCC"). These records include, but are not limited to, the following as applicable:

1. Advertising and solicitation material.

2. Credit applications and any other documents obtained by a creditor or required by law verifying the financial information contained in the application, approvals, and denials.

3. Disclosures required by the UCCC, including the Deferred Deposit Loan Act, and the federal Truth in Lending and Truth in Leasing Acts, and any regulations thereunder.

4. Promissory notes, loan agreements, lease agreements, retail installment sales contracts, invoices, purchase orders, and buyer's orders.

5. Co-signer notices.

6. Rescission notices.

7. Payment and account history documents including application of each payment to principal and, if applicable, interest, prepayment, payment in full, delinquency fees, fees for the return or dishonor of checks or other instruments tendered as payment, credits and refunds, court costs, attorneys fees, and ledger transaction codes. In addition, these records include origination/acquisition and monthly maintenance fees for loans made under the Deferred Deposit Loan Act; and acquisition and monthly installment account handling charges for loans made under § 5-2-214, C.R.S.

8. Delinquency fee and deferral notices.

9. Change in terms notices.

10. Right to cure, default, and repossession of collateral notices.

11. Collection attempt documentation including records of the time, date, and substance of telephone calls.

12. Insurance authorizations, policies, premiums, and certificates.

13. Authorization for benefits permitted as additional charges by UCCC rule.

14. Receipts for cash payments.

15. Release of security interests, termination of financing statements, and payment in full notices.

16. Credit reports, appraisals, title policies, and other records of closing costs on real estate secured transactions legally permitted to be excluded from the finance charge.

17. For deferred deposit/payday loans, a consumer log including the consumer's name, date of all loans made to the consumer for the prior four years, amount financed, dollar amount of each of the three charges contracted for under section 5-3.1-105, C.R.S. (origination or acquisition fee earned as of the date of the loan, interest, and monthly maintenance fees), loan term, date of final payment, method of payment (e.g., consumer's check deposited or cashed; payment electronically debited from consumer's bank account; consumer redeems check or debit authorization with cash; loan renewed), for renewals the amount of any loan proceeds given to the consumer directly and/or paid to others on the consumer's behalf, and if applicable, the dates the lender offered written payment plans and the dates payment plans were established.

18. For deferred deposit/payday loans, daily activity logs, check and cash disbursement registers, and bank records including bank statements and deposit slips reflecting disbursements of loan proceeds and payments on deferred deposit/payday loans.

19. For deferred deposit/payday loans, records of postings of charges, notices on assignment or sale of instruments, and compliance with renewal limitations and payment plan requirements.

20. For loans made under section 5-2-214, "Alternative charges for loans not exceeding one thousand dollars:"

> (a) For each consumer, a consumer log including the consumer's name, date of all loans made to the consumer for the prior four years, date of actual final payment, amount financed, dollar amount of contractual acquisition charge, total dollar amount of contractual monthly installment account handling charge, loan term, method of payment (e.g., paid by consumer, refinanced, or consolidated), the dollar amount of any refunds paid to the consumer upon prepayment, and for refinances and consolidations the amount of any loan proceeds given to the consumer directly and/or paid to others on the consumer's behalf.
>
> (b) Daily activity logs of all loans made, refinanced, or consolidated, including the consumer's name, whether the

consumer is new, a former customer, or a current customer; check and cash disbursement registers; and bank records including bank statements and deposit slips reflecting disbursements of loan proceeds and loan payments.

Rule 11 **Payoff Quotes**

(a) A creditor must deliver or mail a written payoff quote to a consumer within five (5) business days after receipt of the consumer's written request. If so requested by the consumer, the quote may be made by electronic means or orally. A business day does not include a Saturday, Sunday, or legal holiday. No fee may be charged for a payoff quote.

(b) The payoff quote must include the date by which payment must be made for the payoff quote to be valid.

(c) The creditor may require the consumer to provide reasonable identifying information such as the consumer(s) name, date of birth, social security number, account number, and consumer's signature.

Rule 12 **Prompt Crediting of Payments**

(a) A creditor shall credit an accepted payment to the consumer's account as of the date of receipt except when a delay in crediting does not result in imposition of a finance charge, delinquency fee, or other charge or in the payment being reported as a slow or late payment. Deferred deposit loans, if paid by deposit of the consumer's check in the creditor's account, shall be credited as of the date of deposit.

(b) This rule does not prohibit subsequent adjustments to a consumer's account to reflect dishonored checks, drafts, or other payment instruments.

Rule 13 **Rebate of Prepaid Finance Charge Pursuant to § 5-2-207, C.R.S.**

(1) For purposes of Uniform Consumer Credit Code § 5-2-207, C.R.S., if within one year after making a consumer credit transaction for which a prepaid finance charge was imposed, the creditor refinances or consolidates the transaction and chooses to impose a prepaid finance charge on the aggregate principal resulting from the refinance or consolidation [5-2-207(2)(b)], the creditor must rebate any portion of the prepaid finance charge [5-1-301(20)] imposed on the previous transaction that:

(a) on a fixed rate consumer credit transaction, exceeds the disclosed annual percentage rate; or

(b) on a variable or adjustable rate consumer credit transaction, exceeds the lesser of 21% per year on the unpaid balance of the principal [5-2-201] or the maximum annual percentage rate imposed pursuant to the written credit agreement since the inception of the consumer credit transaction.

(2) With respect to a transaction subject to § 5-2-207(2), C.R.S., if a creditor imposes a prepaid finance charge and the charge is set as a fixed dollar amount rather than a percentage of the loan amount, it may only impose a new prepaid finance charge on a

refinance or consolidation within a one year period if it complies with § 5-2-207(2)(b), C.R.S.

Rule 14 **Fee Schedule**
(Repealed effective January 1, 2010.)

Rule 15 **Notification Fees and Volume Fees**
Rule 15 is repealed effective January 1, 2004.

Rule 16 **Deferred Deposit Loan Payment Plans**

(The first paragraph of Rule 16 is effective November 29, 2010.)

This rule is repealed effective August 11, 2010 with respect to loans made or renewed under the Deferred Deposit Loan Act on or after that date. It remains in effect with respect to loans made or renewed prior to the repeal of § 5-3.1-108(5), C.R.S.

For deferred deposit loans subject to section 5-3.1-108(5), C.R.S. on voluntary payment plans, a lender shall also comply with this rule.

(a) Notice of Written Payment Plan Offers

(1) The written notice of the option to participate in a voluntary payment plan required in section 5-3.1-108(5)(a), C.R.S. shall state the following language in at least ten-point type:

"NOTICE OF PAYMENT PLAN OPTION

YOU HAVE THE RIGHT TO PARTICIPATE IN A VOLUNTARY PAYMENT PLAN TO REPAY THIS LOAN. IF YOU SELECT A PAYMENT PLAN, YOU MAY REPAY ANY AMOUNTS DUE IN AT LEAST 6 EQUAL INSTALLMENTS RATHER THAN 1 SINGLE PAYMENT. PAYMENTS WILL BE DUE ON YOUR PAYDAY OR DATE YOU RECEIVE BENEFITS. THERE IS NO ADDITIONAL FEE FOR A PAYMENT PLAN.

YOU MAY SELECT THE PAYMENT PLAN NOW OR AT ANY TIME BEFORE THE CLOSE OF BUSINESS ON THE DAY BEFORE THIS LOAN IS DUE. TO SELECT A PAYMENT PLAN (select either or both of the phrases below as applicable)

RETURN TO THIS LOCATION OR ANY OTHER BRANCH LOCATIONS WE OPERATE IN COLORADO. CONTACT OUR OFFICE FOR THE NAMES AND ADDRESSES OF OTHER BRANCH LOCATIONS, IF ANY, WE OPERATE IN COLORADO.

(and/or)

IF THIS LOAN WAS ORIGINATED AT A WEB SITE, BY TELEPHONE, OR AT ANOTHER REMOTE LOCATION, VISIT OR CONTACT US AT (insert applicable information).

THE DECISION TO SELECT A PAYMENT PLAN IS YOURS TO MAKE. IF YOU SELECT A PAYMENT PLAN, THE LENDER MUST PROVIDE A PLAN THAT

MEETS THE REQUIREMENTS DESCRIBED ABOVE. YOU ARE ENTITLED TO RECEIVE A COPY OF THIS NOTICE.

BY SIGNING BELOW I ACKNOWLEDGE THAT I WAS OFFERED THE OPTION OF A PAYMENT PLAN.

_____ _____

(signature) (date)"

(2) The Notice of Payment Plan Option shall prominently include the lender's business name, physical location address, and telephone number, and shall also include the consumer's signature and the date the notice was provided. It shall be contained in a document separate from the loan application, loan agreement, contract, and any other disclosures required by state or federal law, except that the notice may also contain the written payment plan. The lender shall provide the consumer with a copy of the notice of payment plan option in a form the consumer may keep.

(b) Contents of Written Payment Plan. The written payment plan shall contain all of the following information:

(1) Total amount of existing debt,

(2) Dates of each payment,

(3) Amount of each payment,

(4) That there is no additional fee to select a plan,

(5) That the lender is prohibited by law from collection activities while the consumer meets the terms of the plan,

(6) That the lender and its affiliates are prohibited by law from making any deferred deposit loans to the consumer before a plan is completed, and

(7) That if the consumer does not pay the full amount of each payment by the due date, the lender may collect all of the remaining debt due and charge the consumer a $25.00 default fee.

A lender that requires a consumer to provide post-dated checks or electronic authorizations for the payments under the plan must disclose that information in the written payment plan. The payment plan must be dated and signed by both the lender and consumer.

(c) Record Retention. A lender shall maintain records relating to all of its written payment plan offers and payment plans pursuant to Rule 10 of the Uniform Consumer Credit Code Rules.

Rule 17 **Deferred Deposit/Payday Loans**

(Rule 17 is effective November 29, 2010.)

For deferred deposit/payday loans, the following rules apply. All references to payday loans also include deferred deposit loans.

(A) Origination/Acquisition Fee

The finance charge permitted by section 5-3.1-105, C.R.S. of up to 20% of the first $300 loaned plus 7.5% of any amount loaned in excess of $300 may be referred to as an "origination" or "acquisition" fee.

(B) Installments

1. The lender and consumer may contract for payments to be made in a single installment or multiple installments of substantially equal amounts due at equal periodic intervals.
2. All applications for payday loans and payday loan agreements shall clearly and conspicuously disclose that under Colorado law, loans may be structured to be repaid in a single installment or multiple installments. If a lender does not offer both installment options, it shall also clearly and conspicuously disclose in its applications and loan agreements the option it provides.

(C) Interest Rate

The interest rate of up to 45% per annum permitted by section 5-3.1-105, C.R.S. may be assessed only on the amount financed of $500 or less. It may not be assessed on the origination/acquisition fee or monthly maintenance fees.

(D) Monthly Maintenance Fees

1. A monthly maintenance fee may be charged for each month the loan is outstanding after the first 30 days of the loan. The number of monthly maintenance fees permitted is equal to the number of months in the loan term less one month. For example, on a six month loan, a monthly maintenance fee may be charged at the end of the second through sixth months if the loan is outstanding during that time.

2. A monthly maintenance fee may be charged on each $100 increment of the amount financed. No fee may be collected on amounts of less than $100. For example, on a $350 loan, the permitted monthly maintenance fee is $22.50 (3 increments of $100 x $7.50 = $22.50).

3. A monthly maintenance fee is not earned until the end of the month. If a payday loan is prepaid in full at any time during a month, no monthly maintenance fee may be collected for that month.

4. The monthly maintenance fee may be based on the amount financed rather than the actual balance remaining each month.

(E) Posting of Charges

To comply with section 5-3.1-113, C.R.S., a lender shall post in its place of business examples of the total of all charges for a 6-month loan in the amounts of $100, $300 and $500 based on the assumption that the loan will be paid as scheduled. If the lender does not offer loans in those amounts, it shall post examples for its minimum and maximum loan amounts. If the lender offers both single and multiple installment loans, it shall provide the examples for both single and multiple installment loans. If a lender offers renewals, it shall also post the total of all charges for renewal of a 6-month loan using the same examples. If a lender does not offer renewals, it shall post a statement that although state law permits renewals, it does not offer renewals. Lenders that make loans over the internet shall post the charges required by this rule on their web sites. No other loan terms or payment information may be included in the required posting of charges.

(F) Payment Instruments

If a payday loan is payable in multiple installments, the lender may hold a single payment instrument or a payment instrument for each installment. The amount of the payment instrument may include the loan principal and origination/acquisition fee. The payment instrument or authorization may not include interest or the monthly maintenance fee. The lender may collect the remaining amount due under each installment but may not hold a payment instrument or authorization for such additional amount.

(G) Application of Payments

Subject to rule 17(I), a lender may contract for and apply payments on a payday loan using a precomputed or non-precomputed method. A lender that contracts for a non-precomputed loan shall clearly and conspicuously disclose in the loan agreement "late payments made after the due date will result in additional interest charges."

(H) Renewals

1. Upon renewal of a payday loan, the lender may not charge an origination fee, acquisition fee, or monthly maintenance fees.

2. Upon renewal of a payday loan, the lender may refinance an amount up to $500. If the amount owed exceeds $500, the lender may refinance up to $500 and the consumer must pay any remaining amount.

(I) Prepayments and Refunds

1. A consumer may at any time prepay a payday loan in full or in part without a penalty prior to the due date or date the last installment is due.

2. The refund required by section 5-3.1-105, C.R.S. shall include the pro-rata portion of the origination/acquisition fee, the interest rate, and the monthly maintenance fee.

3. Consumer refunds may be paid to the consumer by cash, check, or similar method, or by appropriate credit to the remaining balance of the loan but may not be applied as a credit to another open account or for a future loan with that lender or any other lender. If a lender makes a cash refund, it shall provide the consumer with a cash receipt and comply with rule 10(a)(14).

4. If a consumer exercises the right to rescind the loan by 5 p.m. of the next business day pursuant to section 5-3.1-106(2), C.R.S, the lender shall refund all charges imposed pursuant to section 5-3.1-105, C.R.S.

(J) Default

1. If a payday loan is payable in 5 or more installments and the consumer is in default for failure to make a required payment, the lender may not accelerate the balance or enforce a security interest, including depositing any remaining payment instruments, unless it complies with the right to cure default provisions in UCCC sections 5-5-110 and 5-5-111.

2. The lender may not charge or collect more than one returned instrument charge on a payday loan, regardless of the number of payment instruments returned unpaid or the number of times a payment instrument is presented and returned unpaid. The amount of the single returned instrument charge may not exceed $25 and must be contracted for in the loan agreement.

3. The lender may not charge or collect monthly maintenance fees for any months the loan remains unpaid after the end of the scheduled final due date.

RULES OF THE ADMINISTRATOR, COLORADO FAIR DEBT COLLECTION PRACTICES ACT

Scope of Rules

These rules apply to all collection agencies and debt collectors, whether or not exempt from licensing under the Colorado Fair Debt Collection Practices Act, unless the rule is limited to "licensees" or "applicants." The words "client" and "creditor" have the same meaning throughout these rules.

Chapter 1
Licensing and Disciplinary Matters

Rule 1.01 Collections Manager

(1) Whenever an applicant or licensee designates a new collections manager, it shall notify the Administrator by filing a collections manager application form. the collections manager shall meet the qualifications of sections 12-14-119, 12-14-123(2), and the other applicable provisions of the Colorado Fair Debt Collection Practices Act.

(2) Pursuant to section 12-14-122(3)(a), C.R.S., an application filed due to a change of collections manager shall be filed within thirty days of the change. The temporary absence of an approved collections manager does not constitute a change requiring designation of a new manager.

Rule 1.02 Licensure

(1) No license shall issue until all necessary documents and information have been filed, all fees paid, and the designated collection manager's qualifications to collect debts has been determined. No debts may be collected nor creditor accounts solicited until a license has been issued.

(2) Within ninety (90) days after notice from the Administrator that the application is incomplete, the applicant must complete the application for licensure by providing all necessary documents, information, and fees specified. If the licensure application is not completed within that time, the application shall be null and void and the applicant must then reapply for licensure, including payment of all fees.

Rule 1.03 Aliases

(1) Licensees must retain records reflecting the true name of all debt collectors and, if applicable, the one alias used by each debt collector. These records shall be retained for two (2) years after the debt collector

leaves the licensee's employment. The Administrator may require a licensee to submit these records at any time.

(2) No debt collector may use more than one alias. The alias must consist of both a first and last name. Debt collectors employed by a licensee may not use the same alias.

Rule 1.04 Letters of Admonition

(1) Any letter of admonition issued against a licensee or collections manager shall be mailed by first-class certified mail.

(2) A licensee or collections manager receiving a letter of admonition may appeal the admonishment by filing a written request within forty (40) days after the date of the letter. Upon receipt of a timely appeal, a hearing will be held. While an appeal is pending, the letter of admonition shall be vacated until conclusion of a hearing held pursuant to Rule 1.04(3).

(3) Any hearing held following a request to appeal the issuance of a letter of admonition shall be conducted pursuant to the State Administrative Procedure Act, title 24, article 4, of the Colorado Revised Statutes. If a violation of the Colorado Fair Debt Collection Practices Act, the rules adopted pursuant thereto, or a lawful order has occurred, or the licensee fraudulently obtained a license, the licensee, collections manager, or both, as applicable, may be disciplined as provided in § 12-14-130(10), C.R.S.

(4) If the Administrator determines that a violation is minor or technical, the Administrator has the discretion to issue an advisory letter in lieu of a letter of admonition.

Rule 1.05 Termination of License

(1) Upon the termination of a license by revocation, expiration, denial, or surrender, the licensee must immediately cease collection activities. All client accounts must be returned to the clients within thirty (30) days unless the licensee has written authorization from the client to transfer or assign the accounts to another collection agency for collection. No later than the end of the thirty day period, the licensee must file a notarized affidavit with the Administrator of the Collection Agency Board stating its compliance with this rule and providing the names and addresses of all clients for whom it was attempting to collect debts.

(2) The licensee shall not charge or retain any fee or commission for the return or transfer of client accounts made pursuant to Rule 1.05(1).

(3) All consumer payments received after the revocation, expiration, or surrender of a license shall be immediately forwarded in full to the applicable client without the licensee's retention of any fee or commission.

(4) This rule does not prohibit the bulk sale of the licensee's business, assets, and goodwill as a unit, including the provision of information to enable the purchaser to solicit reassignment of client accounts directly from the client after termination of a license. A licensee may not purchase the right to collect client accounts from another licensee but only the right to solicit their reassignment from the client.

(5) This rule does not apply to any license voluntarily surrendered in conjunction with the simultaneous issuance of a new license due to any of the changes listed in § 12-14-122(2)(c), C.R.S.

Rule 1.06 License Renewals

Collection agency licenses shall be valid from the date of issuance to the following July 1. In order to renew its license, a licensee must file its completed renewal application and renewal fee on or before July 1 of each year or its license shall automatically expire.

Rule 1.07 Address Changes

A collection agency's obligation to provide written notice to the administrator within thirty days after an address change pursuant to section 12-14-122(1)(a), C.R.S. applies to both the local Colorado office and the principal place of business printed on the collection agency's license, and may be provided by facsimile, electronic mail, U.S. mail, or any other delivery method.

Rule 1.08 Abbreviated Applications

(1) A licensee filing an abbreviated license application upon a change of ownership structure pursuant to section 12-14-122(2)(c)(III), C.R.S. is not required to submit the following:
   (a) Investigation fee;
   (b) List of currently employed debt collectors and solicitors;
   (c) License verification forms from other states that license the applicant; and,
   (d) If there has been no change in any of the documentation on file with the administrator:
      (i) Personal affidavits of owners, officers, members/managers, and partners;
      (ii) Collections manager application; and
      (iii) List of branch offices.

Rule 1.09 Local Colorado Office

(1) A collection agency may satisfy the local Colorado office requirement of section 12-14-123(1)(b), C.R.S. by contracting with a third-party if the third-party:
   (a) maintains an office in Colorado open to the public during normal business hours that may be a shared office location if signs or

directories are posted or displayed listing all collection agencies for whom the third-party provides a local Colorado office;

(b) maintains at that office records, or free and easy access to records, of all moneys collected and remitted for Colorado residents;

(c) accepts payments physically made at that office for any debt the agency is attempting to collect;

(d) staffs that office with a full time employee who may be a shared employee;

(e) provides a telephone number that may be a shared telephone number, that rings to the local Colorado office, and is answered in a manner that does not mislead consumers; and,

(f) complies with all applicable provisions of the Colorado Fair Debt Collection Practices Act.

(2) A collection agency that uses a third-party to provide a local Colorado office is responsible for actions of the third-party that violate the Colorado Fair Debt Collection Practices Act.

Chapter 2
Consumer Protections

Rule 2.01 Notices

(1) The consumer rights information required to be in the initial written communication and the validation of debts notice may be printed on two (2) separate pages provided that the first page contains language referring the consumer to the second page and the two (2) pages are attached together.

(2) Every collection notice mailed or delivered by a licensee must contain the collection agency's name, mailing address, toll-free telephone number, and the address and telephone number of its local Colorado office. The collection agency's address(es) may not be printed only on any portion of the collection notice designed to be returned to the agency with the consumer's communication or payment. "Toll-free" means a call made at no cost to the consumer.

Rule 2.02 Payment Agreements and Schedules

No collection agency shall engage in unnecessary, additional collection activities on a debt while a consumer is complying with the terms of a payment agreement or schedule agreed to by the collection agency and consumer concerning the debt. "Unnecessary, additional collection activities" shall not include the mailing of payment coupons or reminders, the mailing of receipts, any communications requested by the consumer that do not contain demands for collection, or the filing or notification of post judgment liens.

Rule 2.03 Costs of Collection

(1) No collection agency shall add, collect, or attempt to collect a charge for costs of collection unless such costs are expressly authorized by statute or by the contract, agreement, note, or other instrument creating the debt and are not otherwise prohibited by law.

(2) No licensee shall advise, suggest, or request that a client add collection costs to any existing debt unless such costs are specifically authorized by statute.

(3) If a statute, contract, agreement, note, or other instrument specifically authorizes the addition of collection costs and such costs are collected, the licensee may retain only those collection costs exclusive of attorney fees and court costs as its fee or commission for the collection of the debt, unless otherwise agreed to in writing with the assignor.

(4) No collection agency shall add, collect, or attempt to collect costs of collection pursuant to § 13-21-109(1)(b) (II), C.R.S. on any dishonored check, draft, or payment order payable to it unless the check is assigned for collection to another collection agency not owned in whole or in part by the payee collection agency.

Rule 2.04 Overpayment

If a collection agency has received final payment of any debt which overpays the debt by more than five dollars ($5.00), it shall issue a refund to the consumer of the amount of the overpayment within thirty (30) days after the end of the month in which the payment was received unless otherwise required by law or as directed by court order.

Rule 2.05 Cash Payments

A collection agency shall provide the consumer with a receipt for all payments made in cash or by any other means which does not in and of itself provide evidence of payment. The receipt shall be provided to the consumer within five (5) business days after the payment is received. A "business day" does not include Sundays or legal holidays.

Rule 2.06 Account Statements

(1) Subject to the payment record retention requirements of Rule 3.03, a collection agency shall provide the consumer with a written statement of the consumer's payments for as long as the collection agency has had assignment of the debt within ten (10) days after the consumer makes a written request. The statement shall include the consumer's name, the creditor's name, the amounts paid, the dates on which payments were received, the allocation of each payment to, as applicable, principal, interest, court costs, attorney fees, other costs, the interest rate, and the

current balance due. Account statements shall be provided upon request without charge once during any twelve (12) month period. If additional statements are requested, they may be provided upon payment of a reasonable fee not to exceed five dollars ($5.00) per statement.

(2) After a debt has been paid or settled in full, a collection agency shall provide a written statement or receipt that the debt has been paid or settled in full within ten (10) business days after request by the consumer. Such a statement shall be provided free of charge. A "business day" does not include Sundays or legal holidays.

Rule 2.07 Consumer communication Records

Collection agencies shall maintain accurate summaries or records of all communication in connection with the collection or attempted collection of a debt with consumers, a consumer's attorney or representative, the consumer's employer, consumer reporting agencies, and persons contacted to obtain location information, for two (2) years following the date of the communication.

Rule 2.08 Business Cards

(1) No collection agency shall use a business card in obtaining or attempting to obtain location information about a consumer or in communicating or attempting to communicate with a consumer unless:

(a) The business card does not indicate in any way that the collection agency is in the business of collections or is attempting to collect a debt, or,

(b) The business card is placed in a sealed envelope which contains the consumer's name and does not indicate by means of name, symbol, or any marking, that the envelope is from a collection agency.

Rule 2.09 Attorney Letters

(1) During the time that a licensee is in possession of a creditor account, the licensee shall not use or deliver any communication from an attorney unless the creditor has previously provided specific written authorization to commence legal action to collect the debt.

(2) This rule does not prohibit any direct communication from an attorney if the attorney is authorized to collect the debt.

Rule 2.10 Dual Collections

No collection agency may knowingly collect a debt that is being collected by another collection agency or attorney.

Rule 2.11 Office Location

A collection agency may share an office location with another business as long as signs, directories, and other business identification information clearly contain the collection agency's name.

Rule 2.12 Consumer Payments

(1) All accepted consumer payments must be credited to a consumer's account to reflect payment no later than the next business day following the date payment was received unless the delay will result in any economic harm to the consumer or the payment is by post-dated check. Post-dated checks shall be credited to the consumer's account to reflect payment as of the date of deposit in the collection agency's trust account.

(2) This rule does not prohibit subsequent adjustments to a consumer's account to reflect dishonored checks, drafts, or other payment instruments.

Rule 2.13 Checks Not Paid Upon Presentment

A collection agency collecting a check, draft, or order not paid upon presentment shall send the consumer its validation of debts notice required by § 12-14-109, C.R.S. at least fifteen (15) days prior to the mailing or service of the notice of nonpayment required by § 13-21-109(2)(a) and (3), C.R.S.

Rule 2.14 payment Authorization by Telephone

(1) if a consumer's authorization for payment of a debt is provided orally, the licensee must also:

(a) Obtain the consumer's written authorization for the payment prior to the date of payment, or

(b) If permitted by law, record by audio tape or other digital means the consumer's verbal authorization and retain the recording, or

(c) Transfer the consumer's telephone call to a manager or another debt collector to verify the amount, means, and verbal authorization for payment.

(2) If a collection agency does not comply with section (1) of this rule and the consumer denies or disputes the purported oral payment authorization within sixty days of the payment, the collection agency must refund the payment amount within five (5) business days of receipt of good funds. A "business day" does not include Sundays or legal holidays.

Rule 2.15 disclosure of contact information

upon the request of a consumer or person contacted for location information, a licensee shall provide the address of its principal place of business and mailing address, its toll-free telephone number, the address and telephone number of its local Colorado office, and, if applicable, its facsimile number.

Rule 2.16 Debt Collector Obligations

Except as otherwise provided, all references in this Chapter 2 to collection agencies shall apply to debt collectors.

Chapter 3
Creditor Protections

Rule 3.01 Trust Accounts

(1) A licensee shall maintain the trust account required by section 12-14-123(1)(c), C.R.S., but need not maintain the account in a Colorado bank or financial institution if the licensee maintains one or more trust accounts in other states for the benefit of its clients, including its Colorado clients, and it executes and files annual written authorization with the Administrator on an approved form acknowledging the account(s) may be attached upon order of a Colorado court.

(2) If any of the trust account information in a licensee's license or renewal application changes, the licensee must file a new bank authorization form within thirty (30) days of the date of the change.

(3) No trust account is required if the licensee does not receive nor have access to any consumer payments because they are made directly to the client according to all of the licensee's contracts or agreements.

(4) A licensee, other than one that only collects debts it owns, shall maintain in its trust account the minimum liquid assets referred to in section 12-14-123(1)(a), C.R.S.

Rule 3.02 Unidentified Accounts

(1) If a licensee receives a consumer payment but is unable to identify the client account on whose behalf the payment is made, the licensee shall return the entire payment to the consumer within thirty (30) days after the end of the month in which the payment was received.

(2) No amount may be retained by a licensee as fee or commission from any consumer payment made on an unidentified account.

(3) If a licensee is able to identify, but cannot locate, a client on whose behalf payment is made, the licensee shall comply with applicable state laws on unclaimed property.

Rule 3.03 Payment Records

(1) Licensees shall maintain a record of all consumer payments for two (2) years following the date the payment was received.

(2) Records of consumer payments shall include the consumer's name, the client's name, the amounts paid, the dates on which payments were received, the allocation of each payment to, as applicable, principal, interest, court costs, attorney fees, other costs, the interest rate, the current balance due, and the date of deposit of the payment to the trust account.

Rule 3.04 Bonds

(1) The bond required of each licensee shall be in the form and manner prescribed by statute, and shall be filed with the Administrator.

(2) As an alternative to the bond, a licensee may present a savings account, deposit, or certificate of deposit.

(a) The savings account, deposit, or certificate of deposit shall be in a federally insured bank or savings and loan association doing business and located in this state or accessible in a branch in this state.

(b) The savings account, deposit, or certificate of deposit shall be assigned to the Attorney General of the State of Colorado for the use of the People of the State of Colorado in the form and manner prescribed by the Administrator. The assignment shall be for a period ending two (2) years after the revocation, expiration, or surrender of a license or on such earlier date as may be determined by the Administrator.

(c) As far as practical, the procedure used to determine claims against a bond shall be used for claims against a savings account, deposit, or certificate of deposit.

Rule 3.05 Return of Accounts

(1) If a licensee may retain accounts in the process of collection, as defined in section 12-14-124(6), C.R.S., it must disclose that information to its clients at the time it initially accepts accounts for collection.

(2) This Rule 3.05 takes effect May 1, 2009 and applies to all of the licensee's current and future clients.

Rule 3.06 Licensee Obligations

Except as otherwise provided, all references in this Chapter 3 to licensees shall apply to applicants.

RULES OF THE ADMINISTRATOR, COLLECTION AGENCY BOARD FOR PRIVATE CHILD SUPPORT COLLECTORS

Rule 1 Scope of Rules

These rules apply to private child support collectors as defined in section 12-14.1-102(9)(a), C.R.S. of the Colorado Child Support Collection Consumer Protection Act and supplement the rules adopted by the Administrator, Colorado Collection Agency Board, implementing the Colorado Fair Debt Collection Practices Act.

Rule 2 Notice of Obligee's Rights

(a) The notice required by section 12-14.1-106(2), C.R.S. must be conspicuous, in bold type face at least as large as the type size used for other contract terms, included in or attached to the private child support enforcement contract prior to the space for the obligee's signature agreeing to the contract terms, and read as follows:

> **Child support collection services are offered at low or no cost through government child support collection services in every county in Colorado and in every state. A state agency may provide services that we cannot provide, such as driver's license suspension and tax refund intercepts.**
>
> **We cannot require a government child support collection service to send payments to any person but you.**
>
> **We will not provide legal advice or act as your attorney. If we hire an attorney to assist in collections, you will not have to pay any additional fees.**
>
> **You have the right to receive a monthly accounting of payments collected, the fees we have charged, and the amount still due.**
>
> **You have certain rights to cancel this contract. See the contract for cancellation terms and the "Notice of Cancellation" provided with this contract.**
>
> **You have the right to sue us if we violate the law. You also have the right to file a complaint with the Administrator of the Collection Agency Board in the Colorado Attorney General's Office. For more information about private child support collection or to file a complaint visit http://www.ago.state.co.us/CADC/CADCmain.cfm.**
>
> **You may have this contract reviewed by an attorney of your choice before you sign it.**

(b) If the Web site address listed in subsection (a) above becomes outdated, private child support collectors must print in their notice the current Web site address.

(c) A private child support collector may substitute its name for the words “we” and “us” in the notice described above in subsection (a).

Rule 3 Accounting

(a) In addition to the information required by section 12-14.1-107(1), C.R.S., a private child support collector’s monthly accounting to the obligee must include:

1. The specific dollar amount to be collected according to the contract;

2. The date and amount of any child support collected by the private child support collector in the prior month, which amount collected shall be listed as both a gross amount and also itemized and described as principal, interest, and other fees as applicable and if allowed by law;

3. The amount due to the obligee from the prior month’s collections, the amount actually paid to the obligee from the prior month’s collections, and the date of payment;

4. The amount retained by the private child support collector pursuant to the contract with a description of how that amount was calculated, such as by providing the specific percentage amount or dollar amount contracted for; and,

5. A running total since the inception of the contract of the amount collected by the private child support collector, the amount it has paid to the obligee, and the remaining balance.

(b) Unless a shorter timeframe is required by applicable state or federal law, a private child support collector shall deliver to the obligee any payment due under the contract and the monthly accounting no later than by the tenth day of the month following receipt of the payment. The accounting shall be provided monthly, whether or not the private child support collector has collected any payments in the prior month.

UNIFORM DEBT–MANAGEMENT SERVICES ACT RULES

Rule 1 **Fee Schedule**

The fees for debt management service providers shall be those listed below.

Registration fees are payable by fiscal year from July 1 to June 30. Registration fees are not pro-rated for part of a year nor are they refundable. Registration fees are assessed per provider, rather than per business location.

Fee	Amount
Initial Registration Fee [12-14.5-205]	$1,000/fiscal year
Renewal Registration Fee [12-14.5-211]	$1,000/fiscal year
Examination Fee [12-14.5-232]	$60/hour plus reasonable and actual travel costs

Rule 2 **Adjustment of Dollar Amounts – Consumer Price Index**

(a) The base year for adjustment of dollar amounts to reflect inflation shall be the 2007 Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, 1982-84 = 100, All Items, Annual data (not seasonally adjusted) issued by the United States Bureau of Labor and Statistics. If the CPI-U is revised after 2007, the percentage of change shall be calculated on the basis of the revised index.

Rule 3 **Insurance Cancellation Notice**

(a) Any insurance policy submitted by a provider as evidence of insurance required by § 12-14.5-205(b)(4), C.R.S. shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy. On or before July 30, 2008, providers that previously submitted insurance policies shall supplement the policy by filing with the Administrator the insurer's written agreement to provide written notice of termination or reduction.

(b) The written notice of termination or reduction of the policy shall be sent by certified U.S. mail to the Administrator, Uniform Consumer Credit Code, 1525 Sherman St., 7th Floor, Denver, CO 80203, or the most current address for the Administrator.

(c) The insurer's termination or reduction of liability shall be effective from and after the expiration of thirty days from the Administrator's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy.